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ABSTRACT

This guide is designed to aid high school teachers of business law in Pennsylvania to structure their courses. Specifically, it is intended to help teachers identify and place correct emphasis upon those areas of business law which will most nearly meet the students' needs when they reach adulthood, to help teachers to inculcate in the students the necessity for acceptable social values when dealing with others, and to help teachers explore alternative teaching strategies useful in the presentation of business law in their classes. The guide is organized in nine chapters, and also contains a bibliography of business law books, periodicals, and sources. Topics covered in the teaching guide include the following: philosophy, goals, and objectives of the high school business law course; course content for a semester, year, or mini-course; teaching legal vocabulary; teaching legal fundamentals; teaching law as applied to contracts; contracts dealing with property; laws that govern business relations of individuals; and student and teacher evaluation. Throughout the chapters, teaching suggestions are given, and technical background knowledge needed by teachers is provided. (KC)

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Business Law for Business Education Departments in Pennsylvania's Public Schools

Bulletin 280

by Natalie P. Nichols
Pennridge High School
Perkasie, Pennsylvania

Bureau of Vocational Education
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1981

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Message From The Secretary of Education

Historically, business education programs have been composed primarily of courses, such as shorthand and typewriting, which require acquisition of vocational skills. To develop student proficiency in these skills, many business teachers have relied upon one major teaching technique—drill. Business law, on the other hand, is a sociobusiness course where the major goal is students' understanding of the American legal system and its function in our society.

Emphasis should be placed upon the students' ability to use information logically. In sociobusiness courses the teacher is a guide, a mentor and a referee. In skill courses the teacher's role is that of a coach. In sociobusiness courses there is much teacher-student planning, which leads to a wide variety of teaching techniques. In skill courses the instruction is usually teacher-directed.

The purposes of this bulletin are to help teachers identify and place correct emphasis upon those areas of business law which will most nearly meet the students' needs when they reach adulthood, to help teachers to inculcate in the students the necessity for acceptable social values when dealing with others, and to help teachers explore alternative teaching strategies useful in the presentation of business law in their classes.

Robert O. Scanlon

Preface

The need for technical assistance in business law has been evident for some time. Inquiries for help of this nature are being received continuously. Therefore, this guide is an outgrowth of the needs of teachers in the Commonwealth and will be subject to change and revision as employer requirements, teaching experiences and textbook materials change. In keeping with this philosophy, Bulletin 280 is offered for the use of business law teachers.

The Department of Education is indebted to Natalie P. Nichols, formerly chairperson, Business Education Department, Pennridge High School, Perkasie, PA 18944, who researched and wrote the text. Also, appreciation is extended to the business educators in Pennsylvania, whose names are indicated on page iii, who reviewed and offered valuable suggestions that have been included in this guide.

Inquiries about this publication should be directed to William H. Selden, Jr., supervisor, Vocational Business Education, Department of Education, Box 911, 333 Market Street, Harrisburg, PA 17108.

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CHAPTER ONE

Business Law in the High School Program

In no country is law so general a study . . . This study renders men acute, inquisitive, dextrous, prompt to attack, ready in defense, full of resources. They augur misgovernment at a distance, and snuff the approach of tyranny in every tainted breeze.

—Edmund Burke

In a presentation titled, "The Crisis in the Nature of the Law," a former United States Attorney General, Edward Hersch Levi, defined law as follows:

> Law has some unique and special functions. It is not primarily a social science describing how some institutions operate. It is not primarily a tool for determining how transactions will turn out or for predicting what the courts will do. These are important services but they are subsidiary to law's major commitment—to develop concepts and to maintain and operate procedures which will enable a sovereign community to be governed by rule for the common good, the attainment of human values, and to make that rule effective.[1]

JUSTIFICATION AND RELEVANCY

The ability of people to get along with one another is the basis of every civilization. Law has occupied the minds of men and women since antiquity. The total body of law, written and oral, is so vast that no person can understand its full impact upon society, let alone know its substance in detail. Business law, alone, has so many ramifications and so voluminous a body of information that many lawyers use only small segments of business law as their specialty, for instance, the practice of corporate law. In addition, the general education value of such a course is priceless, since law is a part of almost everything we do from birth until death.

In recent years, the interest in business laws has been increasing. The reasons for this increased interest come from several sources. First, our pattern of living has made legal encounters more numerous and litigations more frequent. Second, employers expect employes to comprehend business law so the employe will perform in a manner which will project

[1] Edward Hersch Levi, "The Crisis in the Nature of the Law," *National Observer*, January 25, 1975, p. 15.

a positive image of the business. Third, the continuous coverage by the news media of questionable conduct of some of those holding responsible positions in government and in private enterprise has spurred an interest in the students to elect business law in high school.

Also, business law would be a most important course for those students whose career objective is to become either a certified professional secretary (CPS) or a certified public accountant (CPA). To become a CPS or a CPA necessitates taking and passing an in-depth examination in business law. The one examination is decidedly different from the other. Enrollment in a high school business law course would help prepare a student for this type of examination. In addition to the background that might be received in high school, one would either need to do much studying on his or her own or enroll in one or more postsecondary business law course(s).

ADMINISTRATIVE CONSIDERATIONS

Teachers are circumscribed by administrative considerations, such as grade placement and class size. In addition, consideration needs to be given to budgets and classroom space.

Grade Placement and Class Size

Business law usually is offered as an elective course in grade 12. This is indicated on pages 5, 6 and 7 of Part III of the 1978 Department of Education publication, *Regulations, Standards and Guidelines for Vocational Education*. Students in grades 9, 10 and 11 usually do not have the interest and retention ability and are not mature enough to appreciate their personal contacts with laws governing their actions. However, young people seem to mature much faster with each passing decade. One who turns 16 often has access to, or owns, a car. With the possession of a driver's license, traffic regulations and automobile insurance laws become a reality to be coped with daily. Thus, the student is often the one who initiates an interest in business law.

Class size is an important consideration. Since business law usually is an elective course, there is often a temptation to enroll a large number of students into the course as a means of completing their schedule. This practice should be avoided because it usually "packs" the classes with students of low motivation and increases the chances of disciplinary problems. Also, there should be a significant amount of group discussion and a smaller class encourages this type of activity.

Length of Course Offerings

Business law, unlike many business education courses, lends itself readily to a variety of time schedules. Usually, business law is offered as a semester or full-year course in which students meet five days a week

for one period each day. However, it can be taught as a group of mini-courses, each with definite objectives which appeal to a specific group of student interests. This flexibility makes business law an ideal offering which broadens the scope and the utility of the business education program.

Furthermore, if interest among the students warrants and scheduling permits, more than one course, varying in content and/or time length, may be offered to accommodate students with scheduling problems and special interests. Examples include the college preparatory student who can schedule only a business law mini-course; the student in a vocational program other than business education who would like a semester course which includes contracts; the business major who is primarily interested in law terminology and legal documents that could be taught in a full-year course; and finally, the general student, uncertain of his or her future interests, who is looking for additional credit toward graduation might take either a semester or full-year course. Whatever the approach, the schedule obviously has a bearing upon the course content and the various teaching methodologies available to the teacher.

Type of Student Enrolled

To a large extent the intelligence and the motivation of students in a class will determine the amount of material which can be covered within the prescribed time. This is not to say that interests cannot be developed. Unique approaches to the subject matter often can create interest where no interest seems evident in the beginning of the course. A truly dedicated and knowledgeable teacher can, and often does, transmit his or her enthusiasm to a class of students who seem apathetic and indifferent at the beginning of the semester.

Philosophy of the School District

The basic philosophy of the school district may affect the content of any course taught, the method of its presentation and the approach to the subject matter which the teacher will have to adopt. If the district expects teaching to be done within the confines of the four walls of a classroom with little modification of the lecture and the question-and-answer method, the teacher will have to use all the ingenuity and expertise at his or her command to make the course meaningful. If, on the other hand, the school system encourages innovative teaching methods, the teacher may use options, such as individual packets, learning centers and small-group instruction to enhance the teaching-learning environment. If school policy encourages educational trips and outside speakers, they should be provided. If a school's policies limit the number of field trips, the course should be organized so that it will have a minimal disadvanta-

geous effect upon the learners' interest and enthusiasm. Perhaps the field trip could come to the class by allowing a small group of students to visit the field trip site, taking pictures, writing a script and reporting the findings.

Textbooks

In the selection of a textbook, the following factors should be considered: the type and the age of the students to be taught, the length of the course, the amount of supplementary material available or to be purchased and the availability of outside speakers. In reviewing and recommending a textbook, the teacher should give great weight to its vocabulary, examples, review material, cases, charts and other visual aids. Most textbooks are student-centered in their approach. The topical sequence is probably of least importance, because, depending upon the length of time given to the course, such material can be taught in almost any sequence.

Supplementary Publications

Although the textbook is a valuable source of information about various areas of the law for both student and teacher, other sources also should be used to develop and teach the course. Particular attention should be paid to developing a reference library of law books and periodicals because the law is extensive in its treatment and its application. A partial list of references may be found in the bibliography.

Teacher Qualifications

> Although most instructors called upon to teach high school business law have had only minimal exposure to formal legal training—usually one or at the most two courses at the undergraduate level—the quality of teaching law on the high school level has been uniformally excellent.[1]

Authorities seem to agree that business law courses in high schools do not need highly trained personnel. This probably can be attributed to a number of fortunate circumstances: First, school administrators may elect to offer a business law course because a faculty member is interested in the course and willing to further develop his or her legal background through reading professional magazines or asking local legal professionals for assistance. Second, current business law textbooks are excellent in format and content and make many teaching aids available to the teacher. Third, a high school teacher generally can keep the aims and goals of the average high school student in perspective to a greater degree than someone more highly qualified but less expert in handling high school students.

[1] Fisk, McKee, "Issues in Teaching Business Law", *National Business Education Association*, Reston, Virginia, Yearbook No. 14, 1976, p. 189.

CHAPTER TWO

Philosophy, Goals and Objectives

It may be true that law cannot make man love me, but it can keep him from lynching me, and I think that is pretty important.

– Martin Luther King, Jr.

In presenting a business law course where the subject matter is so vast and the options of emphasis so diversified, serious consideration needs to be given to the philosophy, goals and objectives. While goals and objectives should be based upon school policy and procedures, every teacher's philosophy is personal.

PHILOSOPHY

While the main thrust of business law must necessarily be upon the law in operation and the effect statutes and legal decisions have upon its citizens, social forces make laws what they are today. Students should understand that law is a living, evolving entity changing with each generation as humanity seeks to improve its lot and make life more meaningful for its citizens. To be knowledgeable enough to help this change as they reach adulthood, students need to understand the concepts, the specific vocabulary and the legal procedures as they exist presently.

The students should be shown that law in an organized society controls many aspects of their personal lives. It greets them with a birth certificate. It requires them to attend school after proper immunization. It follows them when they look for a job, buy insurance and negotiate a loan to purchase a home. It tells them how fast they may drive and where they may park. There are laws governing marriage and laws governing divorce. Finally, there are laws directing procedure at death and the disposal of property after death.

Laws protect and restrict us. Laws sometimes punish us, but more often laws help us. Laws are not restricted to criminals or malfactors. Laws govern all citizens, most of whom obviously are law abiding. Some laws are considered good and some are considered not-so-good, but laws are not static. They grow as humanity grows to provide citizens a better way of life.

GOALS

Each course offered in high school has certain goals toward which the instruction is directed. These goals may be implied and nonverbal, but they do exist. Without them no instruction would be possible; at best it would be haphazard. Therefore, goals should be formalized into statements to be used as guidelines for instruction.

The revised Goals of Quality Education for Pennsylvania (adopted by the State Board of Education on March 8, 1979) set down in broad and general terms the aims and objectives of public education in the Commonwealth, and they should be given consideration by educators in offering any course. These goals stress both the cognitive and the affective domains of education.

In a business law course, the following four teacher goals in the cognitive domain should be given consideration:

1. To teach students specific legal vocabulary.
2. To explain (and show by means of field trips or simulations) courtroom procedures.
3. To acquaint students with specific areas of business law—contracts, bailments, agency, insurance, laws governing property, etc.
4. To familiarize students with the background and the history of law as it evolved through the English Common Law.

In the teaching of business law the following three goals in the affective domain are suggested:

1. To inculcate in students a sense of responsibility necessary for a law-abiding citizenry in a democracy.
2. To cultivate in students a feeling that they are part of a law-evolving process and that in the final analysis they, through their elected representatives, govern themselves.
3. To create in students an awareness that they should seek the advice of an attorney when they are involved in legal proceedings.

OBJECTIVES

Specific student objectives should be constructed so that the success of instruction is easily measurable by a variety of testing procedures. For the teacher to say, "This I am attempting to teach," is a start. The next step must be: "Having taught this, did my students learn the specific skill, gain the useful knowledge or change their attitude in some constructive manner?" To this end, specific behavioral objectives set forth at the beginning of a semester are most helpful. Some teachers give a list of course objectives to their students prefixing it with, "When you have finished the course, we hope you will have learned all the items listed on this paper."

Construction of behavioral objectives presents a number of problems since both the cognitive and affective objectives should be given consideration. For years many business teachers concerned themselves almost

entirely with cognitive objectives—teaching skills. Affective objectives were relegated to a small number of isolated areas, such as teaching employer-employe relations.

Business law lends itself favorably to course objectives in the affective domain. The subject matter in business law is not taught for quick recall or acquisition of a highly specialized saleable skill. By including business law in the business education program, no one is attempting to prepare a high school student for work as a paraprofessional legal assistant. The primary purpose of business law is to present to students a broad general knowledge of legal processes under which their daily lives are lived and to give them the opportunity to react to these processes.

This is not to say that the cognitive objectives must be eliminated. As with any discipline, certain basic facts must be acquired by the student as a basis for logical reasoning. For instance, students must learn the terminology which will enable them to read their law textbooks with comprehension. To discuss legal cases with logic based upon legal precedent, students must know the basic elements of topics, such as contracts, bailments, agency and court processes in civil cases. They must learn to recognize the most common legal documents and understand their usefulness.

When students start to reason about justice and the general effectiveness of law, they step into the affective domain. Therefore, in the construction of behavioral objectives for a course in business law, equal consideration should be given to cognitive and affective objectives to enable the student to obtain the greatest benefit from the course.

A partial list of measurable behavorial objectives in the cognitive area follows:

1. Given ten cases of legal disputes, the student will accurately classify the jurisdiction of each case—federal, state, local—with 70 percent accuracy within 25 minutes.
2. Given two law suits—one criminal and one civil—the student will list four essential differences possible in the disposition of each case with 75 percent accuracy within 30 minutes.
3. Given a series of ten legal problems which might involve young people, the student will decide which legal encounters can be handled on a personal basis and which require services of an attorney with 90 percent accuracy within 25 minutes.
4. Given a list of ten legal wrongs, the student will classify each wrong as either a crime or a tort with 90 percent accuracy within 25 minutes.
5. Given a list of 20 legal words previously studied, the student will define these words with 70 percent accuracy within 20 minutes.
6. Given an oral list of 25 legal words, the student will correctly spell these words with 80 percent accuracy within ten minutes.
7. Given a blank promissory note and information needed to

complete the note, the student will fill out the promissory note with 100 percent accuracy within ten minutes.

8. Given a valid contract, the student will read the contract and identify all essentials which make this contract valid with 100 percent accuracy within 25 minutes.
9. Given a set of five cases, the student will classify each as insolvency, voluntary bankruptcy or involuntary bankruptcy with 80 percent accuracy within 15 minutes.
10. Given a sales contract that has one essential element missing, the student will read the contract and identify the missing element with 100 percent accuracy within five minutes.
11. Given a case problem about a young person owning a car, the student will identify the minimum automobile insurance coverage that is needed in Pennsylvania with 100 percent accuracy within ten minutes.
12. Given a 25-question objective test covering laws and legal terms of employment, the student will answer the questions with 80 percent accuracy within 25 minutes.

Measurable behavioral objectives in affective areas are more difficult to construct because attitudes do not easily lend themselves to measurement. The following affective objectives are offered as suggestions to be further developed by the teacher:

1. Given a set of three alternatives in each of the five instances involving automobile operation, the student will pick the most lawful alternative in each instance with 80 percent accuracy within 15 minutes. An example follows: You are driving a car and come to a highway intersection. There are no vehicles in sight in either direction. The light is red. Do you (A) step on the gas; (B) slow down to see if there is a police officer around; (C) stop and wait for a green light.
2. Given a copy of ten newspaper clippings, the students will read the copy and identify the legal problem or problems involved with 70 percent accuracy within 15 minutes. (The teacher will do well to keep on file a number of interesting newspaper and magazine clippings to be used in this test.)
3. Given ten items commonly purchased by a teenager, the student will underscore those items which are *not* covered by minors' contractual protection with 80 percent accuracy in 15 minutes. This list might include *hamburger and Coke,* loaf of bread, sneakers, *ski boots,* raincoat, pair of gloves, pound of hamburger, *gallon of gas, bicycle, ski mask.*
4. Given a list of five juvenile crimes, the student will classify each crime as to its seriousness within five minutes with 80 percent accuracy.
5. Given items such as prolonged insolvency, inadequate insurance

coverage, falsification of facts in a contract, evasion of jury duty and disinterest in election of officials, the student will correctly underscore the consequences of each with 80 percent accuracy within 15 minutes. An example: Insolvency over a considerable length of time will eventually lead to (underscore one) *bankruptcy*, fire sale, loss of a lease, more credit from a bank.

In constructing a course of study each teacher should take into consideration the students, the schedule, the school, the business education department's philosophy and the teacher's objectives for the course. No teacher can effectively teach with objectives with which he or she is not comfortable. Behavioral objectives set limits to the course of study and offer a measure of success in reaching these limits. This is particularly important in business law where so much material is relevant and where the danger of digressing from a course of study leaves the student with little usable information.

CHAPTER THREE

Course Content

. . . for art and science cannot exist but in minutely organized particulars.

—William Blake

A review of current textbooks used in high school business law courses shows a shift of emphasis away from highly technical aspects of the course, such as the study of common carrier, corporation and partnership law, to those areas of law that apply to the individual student as a future citizen and a wage earner. Today's authors emphasize topics, such as contracts, negotiable instruments, transfer of property, the law of sales, insurance and employer-employe relations.

Radice made a study about the future utility of topics taught in business law courses throughout the country. He polled practicing attorneys, business law teachers and former business law students. The respondents were asked to rank 19 separate business law areas in the order of importance. In each group, contracts were listed first. This study stated:

> The statistical analysis revealed that all groups rated contracts as crucial, ranking it first in importance of all major topics of business law. Negotiable instruments were ranked second in importance by teachers and students and third by lawyers. Sales ranked third by teachers and students and second by lawyers. There was diversity of rankings beyond these topics.[1]

In sequential courses where one topic must be mastered before the introduction of another topic, the emphasis and the order of presentation leaves the teacher with little flexibility but to follow the order given in the textbook. This does not hold true for business law. Most business law topics are self-contained and can be presented in any order the teacher deems advisable. While this gives the teacher a great deal of latitude, it also presents problems. Where does one start and what are the logical bases for the decision reached?

The order of presentation depends largely upon a number of pertinent items, none of which can be set arbitrarily by anyone except the teacher.

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[1] Francis J. Radice, "The Most Important Topics for Business Law Course," *Balance Sheet*, January, 1969, p. 211.

First and foremost, how comfortable is the teacher with the over-all subject matter of business law? A beginning teacher, facing his or her first class, would probably do well to follow the sequence of the textbook. With so many adjustments that need to be made during the first year in the profession, anything that simplifies matters is of great help. There are simple matters of discipline, recordkeeping and methodologies which vie for the novice teacher's attention and preclude experimentation in the order of presentation of topical material.

A more experienced teacher probably will want to experiment with the order in which topics are presented by taking into consideration the interest of the class and by being careful to intersperse the less interesting topics among those of high interest.

SEMESTER COURSE

The following sequence is given as an example of the order in which material can be presented by a business law teacher. Because business law often is taught as a semester course, the sample sequence is presented for a course of this length.

UNIT I	INTRODUCTION TO BUSINESS LAW	two weeks
UNIT II	LAW OF CONTRACTS	five weeks
UNIT III	LAW OF SALES	two weeks
UNIT IV	EMPLOYER-EMPLOYE RELATIONS	two weeks
UNIT V	PROPERTY	two weeks
UNIT VI	INSURANCE	two weeks
UNIT VII	BAILMENTS	one week
UNIT VIII	PRINCIPAL AND AGENT	one week

The preceding outline is based upon an 18-week semester course. The material suggested covers 17 weeks, leaving one week for testing and other contingencies. Working from a schedule which is too tight is apt to create undesirable tensions within a classroom. Both the teacher and the students should feel that there is sufficient time to explore ideas and to consider peripheral areas of interest. This is particularly important in business law where the course content is taught as much for values clarification as for content recall.

YEAR COURSE

In a 36-week course (one year) each of the above topics can be enlarged with supplementary material: more field trips, more outside speakers and more use of teaching strategies which bring realism and relevancy to the students. The following additional units also may be included:

UNIT IX	NEGOTIABLE INSTRUMENTS	two weeks
UNIT X	BUSINESS ORGANIZATIONS	three weeks

Business law is a flexible course that can be expanded easily to suit the enthusiasm and interest of the group. However, with so much supplementary material at hand, the teacher must be careful to allot sufficient time to each essential topic and not to become engrossed in any one topic to the exclusion of other important areas. Therefore, an outline similar to the example given should be prepared at the beginning of the course.

MINI-COURSE

In a democratic society all citizens should be exposed to some aspects of business law while in high school. Yet, because of a heavy schedule, many high school students are precluded from electing a semester course in business law. Thus, as adults they may go through life virtually unaware of their legal rights and responsibilities. Business education can offer the many non-business education students some exposure to business law—if only in capsule form—with minimal expenditure of time and the least disruption of school scheduling.

Unlike the many vocational offerings in business education which require a year or more for mastery, this is not true of business law. A mini-course in some aspects of business law may be conducted for any number of weeks—most schools find it beneficial to schedule mini-courses to coincide with marking periods. Those schools which have four marking periods in a school year usually organize these courses to last nine weeks. Schools that have six marking periods a year usually schedule mini-courses to run six weeks. This is not to say that all mini-courses should operate the full marking period. Two mini-courses in one marking period are a possibility.

Mini-courses present a number of considerations which must be evaluated carefully by members of the administrative and business education staffs before they are offered to the student body.

First, the proposed courses should involve an enthusiastic and knowledgeable teacher interested in the limited area covered by the proposed mini-course. Because a business teacher presently is successfully teaching a course in business law does not imply that he or she is equally enthusiastic or knowledgeable about all aspects of the course. In a semester or a year course, these likes and dislikes cancel each other in the total presentation of the material. This is impossible in a mini-course which involves only one segment of the entire subject matter. Teacher enthusiasm is crucial to the success of any course, especially a mini-course. Therefore, many school administrators wisely schedule teachers to teach mini-courses on a voluntary basis.

Second, a mini-course in business law must be nontechnical in content and highly practical in its approach. It must have the "now" relevancy to the student. The teacher should remember that the students probably have no legal experience and that their contact with laws and courts are cursory. Yet, the fact that they voluntarily wish to enroll in a mini-course means that they are interested in that specific segment of the law. They ask and want only that information which concerns them at present or in the immediate future. All these matters should have a high priority in the choice of mini-course offerings and in the way the subject matter is presented to the class.

Third, the organization of material, goals and objectives should be clearly outlined and adhered to during the course. There is little time for experimentation and none for digression once the course has started. The teacher should consider carefully how each objective should be implemented, what strategies should be employed, what student evaluative procedures should be used, what type and how much community participation would be appropriate or feasible and how teacher performance should be evaluated.

A number of mini-courses may be developed from selected chapters in a business law textbook. However, the teacher should be aware that the authors of the textbook presented the material for a semester or year course. Therefore, the material should be altered to fit the immediate goals of the mini-course.

Fourth, because of time limitations, the teacher should prepare work sheets, vocabulary lists and charts to be distributed to the students at appropriate times. Such prepared material is useful to the students, who should keep them in their notebooks for review and reference.

Fifth, mini-courses should carry some credit. Students work even better on something that interests them if there is some credit given for their work.

Sixth, since a student elects a mini-course voluntarily, the course often will draw students from several disciplines and grade levels. Therefore, minimum guidelines or prerequisites for participation should be established. For instance, the course might be limited to the two upper classes in high school.

Seventh, the course title should appeal to the students, not only arousing the students' curiosity but indicating the relevance of the material to be studied. The following course titles are suggested:

Buying Your Own Home
Life Insurance and What You are Buying
Law Courts and Your Rights
Why You Should Make a Will
Leasing an Apartment
Your Rights as an Employe
Buying on Credit

Laws Dealing with Operation and Owning a Car
Equal Rights for Women
Minority Groups and the Law

Mini-course offerings should be adopted slowly, starting with one or two a year. After careful evaluation by the business education department, two or three more courses may be added. The program should "feel its way" and problems should be "ironed out" as they develop. The latest education trends stress the need to diversify high school programs and to give students alternatives in their choice of subject matter. Mini-courses in business law are a step in that direction.

CHAPTER FOUR

Teaching Legal Vocabulary

Without knowing the force of words, it is impossible to know men.

—Confucius

Most every discipline has its own vocabulary—medicine, accounting, engineering, the arts and the sciences. This is not necessarily so with legal terminology as every adult is constantly confronted with legal terms in his or her capacity as a citizen, an employe and a consumer. Authors of business law textbooks recognize the importance of legal vocabulary by including chapter word lists or providing comprehensive legal glossaries for student use. However, students generally find vocabulary study monotonous and, without proper guidance and direction from the teacher, tend to skip assignments dealing with legal terms.

SETTING LIMITS OF VOCABULARY COMPETENCE

Teachers should teach legal vocabulary on two levels: word recognition and word competence. The former implies that the student recognizes legal words when they appear in any reading they might do. Word competence means that the students have full command of the word—its pronunciation, its meaning and its spelling. How long and comprehensive such a competency list should be depends upon the students' abilities and interests, the length of the course and the teacher's experience and judgment. The list of legal terms in Figure 1 is an example of a minimum competency list to be learned at the end of a full-year course in business law.

TEACHING SUGGESTIONS

The teacher should impress upon students that a working knowledge of legal terms will do more than help them pass the course. Motivation to learn legal vocabulary is materially increased if the teacher uses a variety of examples to show that a knowledge of legal terms will benefit students in four ways: one, as citizens, to better understand election laws and court decisions; two, as consumers, to better understand laws dealing with sales contracts and warranties; three, as future business owners

MINIMUM COMPETENCY LIST

administrator	easement	plaintiff
adoption	encumbrance	pledge
adult	equity	power of attorney
agent	escrow	principal
alimony	evict	probate
annuity	felony	proceeding
appeal	foreclosure	process
arbitration	forgery	prosecution
assault	fraud	proxy
bailment	grantor	realty
bankruptcy	guardian	representation
bribery	heir	search warrant
chattels	homicide	slander
citation	indictment	subpoena
common law	injunction	summons
contract	instrument	surrender
conviction	larceny	title
covenant	lawsuit	tort
creditor	libel	trespass
crime	license	trust
damages	lien	verdict
debtor	mandatory	void
deed	misdemeanor	waiver
defendant	mortgage	warranty
domicile	pawn	will

FIGURE 1

or managers, to better understand laws dealing with partnerships, corporations, mergers, negotiable instruments and contracts; and four, as employes, to make wise decisions in matters of union contracts and to understand their rights under Social Security and Workmen's Compensation.

To impress students with the validity of the foregoing statements, teachers have used the following exercise with considerable success:

The teacher asks each student to bring to class a daily or weekly newspaper. The following day, the teacher divides the class into groups of three or four students. Each group reads the headlines of their newspapers and underscores each sentence, phrase or headline which in the opinion of the group contains legal terminology. Underscored terms are cut out of the newspaper and mounted on colored paper. The three or four groups that have commendable displays have their work posted on the bulletin board.

Any daily or weekly paper might include such headlines as Jury Sequestered, Sues for Contract Breach, Transfer of Title Recorded, Acts as Guardian, Tort Case Dismissed, Minors Paroled, Jailed for Perjury, Starts Civil Suit, Seeks Injunction and Case Dismissed.

The above exercise impresses students with how extensive legal vocabulary is in adult situations and stresses the practicality of knowing legal terms even when reading a newspaper. However, it does not tell students that learning legal terminology is easy and free from boredom. Therefore, students should be advised at the beginning of the course that learning a new vocabulary will be necessary.

Teachers rely heavily upon methods, such as spelling tests, meaning tests and sentence assignments. This material should be kept in notebooks for review. Also, some teachers distribute a vocabulary list at the beginning of the term for inclusion in each student's notebook. As each word is mastered, it should be crossed off the list with a notation stating where and how it was first encountered. Students are encouraged to keep a supplemental list of legal words which they encounter on their own; additional credit usually is given for this supplemental list.

Debates, oral reports and question-and-answer sessions are useful in helping students overcome self-consciousness in the use of legal terms.

To relieve the monotony of vocabulary lists and periodic spelling and meaning tests, teachers have used the following strategies with varying degrees of success:

1. Conduct an old-fashioned spelling bee using legal terms.
2. Post new words on an appropriately decorated bulletin board. A student committee can handle this matter.
3. Assign each student to write a sentence which must incorporate several legal terms and have a definite meaning. On the bulletin board post the sentence judged most interesting by the class. For example: The *jury* was *sequestered* by order of the *judge*.

4. Ask students to compose jingles using one or more legal terms. Some students are extremely adept at this; others are not but enjoy reading their classmates' endeavors.

Whichever method the instructor uses—direct approach, motivational approach or gaming approach—the vocabulary should be mastered and the student should be capable of using the minimum number of legal terms comfortably, understanding their meaning easily and spelling the terms correctly.

An entire unit devoted to vocabulary can prove unproductive from the standpoint of motivation, interest and discipline. However, a review unit toward the end of the semester can be profitable. Students can be asked to bring in their notebooks complete with their word lists, jingles, sentences, corrected tests, etc. Outstanding notebooks could be placed on a display table for all to see.

With constant emphasis on the importance of learning legal terminology, by use of games and other motivational strategies and by constant review of legal words previously learned, students learn numerous legal terms.

CHAPTER FIVE

Teaching Legal Fundamentals

Where law ends, there tyranny begins.

—William Pitt

Before proceeding with instruction in specific areas of business law, the teacher should acquaint students with the system of laws under which Americans live. The more background possessed by the students before they begin to study business-related topics, such as contracts, bailments and employer-employe relations, the more meaningful the course.

This background information can be divided into the following categories: historical sources of American jurisprudence, dual judicial system (federal and state), court procedures, court personnel and legal services rendered by an attorney. Each of the above areas presents specific and unique problems for the business law teacher. For instance, the American judicial system includes so much interesting information that it becomes a matter of selectivity as to which material and how much time should be used to present this material to the students. Students enjoy studying about courts and their procedures and are fascinated by its built-in drama. However, teachers, especially beginning teachers, are cautioned against allowing the class to "run away" with the prearranged time allotment by asking for more and more information which may become repetitious and of peripheral importance to the students as adults.

AMERICAN JUDICIAL SYSTEM

The American judicial system is composed of several subsystems which are separate, yet dependent upon each other. A working knowledge of this complexity is of vital importance to the student's appreciation of business law and its application in the American economy.

As a general rule, teachers should strive to present the material in concrete, not philosophical, terms. Students should understand that, unlike the laws of continental Europe and South and Central America which are based solely upon Roman statute law, the American legal system is more complex because its roots lie in two systems—common law as it was practiced in England since feudal times and Roman statutory law, which appeared in England after the Norman conquest.

To further complicate matters, legal jurisprudence in America is divided between federal and state governments, each separate but dependent upon the other. Figure 2 might be drawn on a chalkboard to clarify the material for the students.

Some information about legal jurisdictions may be familiar to the students, though usually vague and imprecise. A teacher might wish to give a short pretest of no more than ten questions. For example: What is an administrative law? What courts deal with breach of the peace? In what law court are patents contested? What is the last court of appeal in Pennsylvania? What is a court of equity? What court handles criminal cases? Under what jurisdiction are bankruptcy proceedings conducted?

Such pretests usually are motivational, not diagnostic, especially in business law, where the subject matter is relatively new to the students. As a motivational tool, a pretest arouses curiosity and a desire to acquire new knowledge.

As with all basic knowledge upon which further learning is built, material dealing with court jurisdictions should be presented as precisely and expeditiously as possible. Case study, class discussion, outside speakers and research papers (for exceptional students) should wait upon mastery of basic facts.

Teachers find that a duplicated outline similar to that in Figure 3 saves time and speeds learning because it gives students concise, detailed material relative to the American judicial system. Most teachers prefer to enlarge upon each point in the outline when they present the material.

Constitutional Law

By the time they reach their junior year in high school, students have been exposed to the United States Constitution and the safeguards it provides citizens. Nevertheless, the teacher should impress upon the students that no common law, statutory law, administrative law or local ordinance may be contrary to the intent or the meaning of the United States Constitution. Students should become aware that each state's constitution—and each state has one—may not contain any laws contrary in spirit or in fact to the United States Constitution.

Common Law

Many American laws come from the English common law, which is a set of legal precedents based upon custom and standards prevailing at the time the cases were tried. Historically, during the Middle Ages, feudal English barons dispensed justice as they saw fit, usually basing their decisions upon prevailing customs. In time, the barons delegated this chore to appointed judges, who often wrote down their decisions to help them try similar cases and to achieve a degree of uniformity. These decisions were compiled, indexed and used extensively throughout England and its

AMERICAN LEGAL SYSTEM

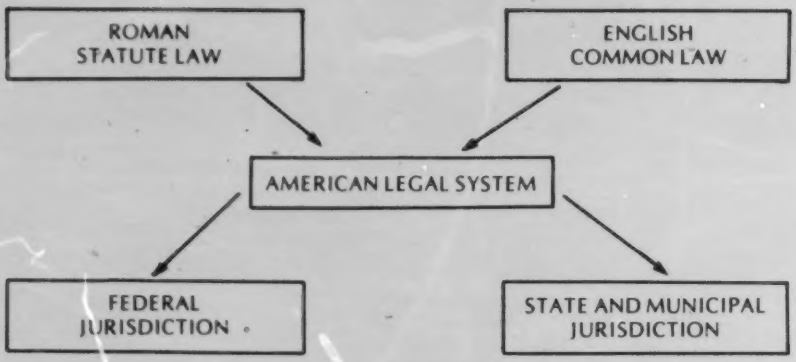

FIGURE 2

AMERICAN JUDICIAL SYSTEM

Types of Laws

1. Constitutional Law—Law of the Land
2. Common Law—Law of trial courts brought from England
3. Statutory Law—Written law enacted by governing bodies
4. Administrative Law—Rules and regulations of various government agencies having force of law
5. International Law—Agreements between sovereign nations

Laws Relating to Individual and Society

1. Private Laws
   a. Torts
   b. Property laws
   c. Laws dealing with contracts
   d. Laws dealing with libel and slander
   e. Business laws
2. Public Laws
   a. Felonies
   b. Misdemeanors
   c. Summary Offenses

FIGURE 3

colonies. This complicated system continues to function extensively in American trial courts.

Statutory Law

Statutory law—federal acts, state statutes and local ordinances—are written codes passed by elected officials and published for all to read. Students usually have no difficulty understanding the concept of statutory law.

Administrative Law

Administrative law is the least understood and the most complicated of all legal jurisdictions. Yet more than any other branch of law, administrative law affects most directly American business and industry.

Autonomous and semiautonomous agencies of both state and national governments (Liquor Control Board, Federal Trade Commission, etc.) have set rules and regulations which have the force of statutory law. For instance, several years ago Congress passed the Warranty Act of 1975. "The act requires that any manufacturer offering a 'full' warranty must agree to correct or replace a defective product free within a 'reasonable' time . . . The FTC was authorized to fill in many details of the vaguely worded law with specific regulations."[1]

These regulations fall into three categories:

1. Prohibitive regulations—no one can practice medicine without first getting authorization from the licensing board.
2. Permissive regulations—one may drive a car 40 to 55 mph on a turnpike.
3. Mandatory regulations—one's income tax return must be filed by April 15.

International Law

Most students know about attempts to regulate relations between sovereign nations, via the League of Nations, the World Court and, currently, the United Nations. All these organizations operate under charters jointly written and passed by participating nations at international conferences. There are international laws which attempt to regulate the fate of prisoners of war; to outlaw the use of poisonous gas; to conserve seals, whales and other endangered species and to regulate flights over foreign territories. Students should understand that since each nation is a sovereign state, many international laws are violated constantly and true international law enforcement is only a goal.

[1] *Time Magazine*, "Anti-Lemon Aid" February 9, 1976, p. 76.

Laws Relating to the Individual and the Society

Because most laws deal with people in their relation to each other or to society as a whole, law is generally divided into private law and public law.

Private Laws. Private laws, dealing with people in their relation to each other, are divided into five main categories:

1. Laws governing torts or private wrongs—trespass, nuisance, negligence, assault, conversion, etc.
2. Laws governing property—sale and lease of property, wills, property taxes, liability, insurance, etc.
3. Laws dealing with validity of contracts
4. Laws of libel and slander
5. Laws that apply to business—employer-employe relations, mergers, partnerships, corporations, etc.

Public Laws. In its attempt to preserve peace and "promote domestic tranquility" as prescribed by the United States Constitution and the constitutions of the several states, society has created a group of statutes designed to control the conduct of its citizens by prohibiting and assigning punishment to certain actions. This is called public law, even though the offense may be against a specific individual. Public laws may be categorized as felonies, misdemeanors and summary offenses.

1. Felonies include major offenses, such as arson, bribery, burglary, conspiracy to commit felony, embezzlement, forgery, fraud, grand larceny, possession and sale of hard drugs, kidnapping, murder, robbery, perjury, restraint of trade (monopoly) and treason. All of these are punishable by imprisonment, heavy fine or both. In all felony cases, the accused is entitled to a trial by jury as a constitutional right.
2. Misdemeanors are less serious crimes, such as assault and battery, major retail theft (TV set for example), drunken driving, minor hit-and-run accidents, driving without a license, violation of highway speed laws and resisting arrest. All of these offenses are usually punishable by fine, or confinement in a city or county jail or both.
3. Summary offenses include minor infractions, such as keeping a barking dog, burning trash, littering, failure to clean snow from a sidewalk and overtime parking. The punishment for summary offenses is usually a fine.

Most business law textbooks, because of space limitation, treat all aspects of public law in a cursory manner to allow as much time and space as possible to the main subject matter—private law. The present trend in education makes inclusion of public law an important part of the course.

STRUCTURE OF THE AMERICAN JUDICIAL SYSTEM

The American court system, like American law, is complicated because it encompasses federal and state jurisdictions. Business law textbooks cover this area only in general terms.

There are a number of strategies which a teacher can employ to help students understand the structure and the jurisdiction of the American court system. Interested students can be asked to report in class on the composition, scope and jurisdiction of a selected court. For instance, a student may report on a recent Supreme Court decision and explain why the Court decided to hear this particular case. Students with artistic ability can be asked to make bulletin board displays showing the structure of federal or Commonwealth of Pennsylvania courts.

An outline similar to the following should be distributed to students, who can refer to it when studying cases that involve various jurisdictions.

Federal Courts

Article III in the United States Constitution provides that "the judicial power of the United States shall be vested in one Supreme Court and such inferior courts as the Congress shall from time to time ordain and establish."

United States Supreme Court. The United States Supreme Court consists of eight justices and one chief justice—all appointed by the President and confirmed by the Senate of the United States. The Supreme Court is the highest court of the land. There are no appeals from the verdict of the Supreme Court.

United States Courts of Appeal. The Courts of Appeal review all cases referred to them by United States District Courts and are usually the last appeal, since the United States Supreme Court itself usually decides which cases it will review. There are 11 United States Courts of Appeal, one for each judicial district or circuit. For example, the Third Circuit includes Pennsylvania, New Jersey, Delaware and the Virgin Islands, and it is located in Philadelphia.

United States District Courts. All cases in which the United States has jurisdiction originate in one of the 93 United States District Courts. These jurisdictions fall into the following categories:

1. cases in law and equity under the Constitution of the United States;
2. cases dealing with treaties, ambassadors and ministers;
3. cases dealing with inland lakes, navigable rivers and seas;
4. cases of dispute between two or more states and
5. cases between a citizen and a state.

The federal district courts are being used more by private citizens than ever before in history. The three federal district courts of Pennsylvania—The Federal Eastern District Court of Pennsylvania, The Federal

Middle District Court of Pennsylvania and The Federal Western District Court of Pennsylvania—are among the busiest in the nation. Constitutional questions, forced busing, civil rights, affirmative action, private suits against companies dealing in interstate commerce, private contractual and tort suits exceeding a specified amount of money and suits involving citizens of different states and countries are but a few examples overloading the courts' dockets.

Other Courts. As business became increasingly complex, Congress established several courts which are empowered to handle cases of a special nature:

1. *Court of Customs* handles all cases arising from payment of duties and customs on imported goods.
2. *Court of Customs and Patent Appeals* handles appeals from the Court of Customs and disputes arising in the Patent Office.
3. *Court of Claims* handles all claims of individuals against the United States government.
4. *Tax Court of the United States* has jurisdiction over cases involving federal taxes.
5. *The United States Court of Military Appeals* is the final appeals court in all cases of court martial.

The teacher could ask students to bring to class clippings from current magazine and newspaper articles describing recent federal court rulings. Many rulings will be Supreme Court decisions, but there are suits pending in lower courts as mentioned previously. Such clippings make interesting reporting and can be used for a bulletin board display.

Courts of the Commonwealth of Pennsylvania

The Pennsylvania court system approximates the federal judicial system. Pennsylvania has a Supreme Court, a Superior Court, a Commonwealth Court and 59 district courts. There is also one municipal court in Philadelphia. All Pennsylvania courts are funded by the State treasury, and all judges are elected or appointed by the governor to fill a vacancy.

The Supreme Court of Pennsylvania. This, the highest court of the Commonwealth, is responsible for administering the entire court system of Pennsylvania. It consists of seven judges, each elected for ten years. This court hears appeals from the lower courts and intermediate appellate courts and has limited original jurisdiction. The Supreme Court of Pennsylvania also passes on all statutes and ordinances affecting the State Constitution. It is a circuit court that rotates its sessions among Philadelphia, Harrisburg and Pittsburgh.

The Superior Court of Pennsylvania. The Superior Court, directly under the Pennsylvania Supreme Court, hears most criminal appeals and many civil appeals from the lower courts. Because Pennsylvania now has a unified court system, it also receives cases assigned by the Supreme Court. There are 15 Superior Court judges who are elected for terms of ten

years, with an option of re-election on a retention basis, as is the case of all judges of courts of record in Pennsylvania. The majority of appeals end with the Superior Court, which is also a circuit court that convenes in Philadelphia, Harrisburg and Pittsburgh.

The Commonwealth Court of Pennsylvania. The Commonwealth Court, the newest court, is an intermediate appellate court, with original and appellate jurisdiction. The original jurisdiction extends to civil actions by and against the Commonwealth, or an officer thereof. It has appellate jurisdiction in appeals from courts of Common Pleas in eminent domain, in the local administrative field and from administrative agencies of the Commonwealth. This third appellate court greatly relieves the increasingly heavy burdens of the Supreme and Superior courts. Commonwealth Court was initiated in 1970 following the 1967-68 Constitutional Convention. Unofficially, however, this court has been in practice since early in the Nineteenth Century, the state assigning cases to lower court judges in Dauphin County. Its cases, too, are heard in Philadelphia, Harrisburg and Pittsburgh.

District Courts of Pennsylvania. By Legislative action in 1951, and according to population, the state was divided into 59 judicial districts. Although there are 67 counties, eight of the less populated counties were merged with other counties to form larger districts. For example, Judicial District number 26 includes Montour and Columbia counties. Each district court in reality is several courts, based on the nature of the case to be heard. They include the following:

1. *Court of Common Pleas* hears civil disputes between citizens of the Commonwealth.
2. *Court of Equity* makes decisions solely upon the merits of the case before it. Examples of equity cases are injunctions, partition of property, specific performance, foreclosures, divorce, rescission of contracts and reformation of contracts.
3. *Criminal Court* tries cases dealing with criminal code violations.
4. *Orphans Court* (also called Probate Court) handles will and estate matters, and has general jurisdiction over minors.
5. *Special Courts*, such as those indicated below, handle cases of frequent recurrence. These courts perform an important judicial function in that they reduce court loads as well as bring expertise to specific cases.
   a. *Traffic Courts* handle traffic and parking violations.
   b. *Juvenile Courts* decide matters wherein a minor is a party to a criminal code violation.
   c. *Domestic Courts* (also known as Family Courts) provide assistance in family disputes, award custody of children, grant visitation rights, give support orders and hear other matters properly brought before them.
6. *Magistrate Court* (also known as District Justice-of-the-Peace

Court) handles disputes over matters involving small amounts of money and summary criminal cases. There are approximately 600 of these minor courts in Pennsylvania. Each judicial district is divided into magisterial districts under the supervision of the district court.

Suggested Teaching Methods

Business law teachers should acquaint students with the court system that will affect them most directly as adult citizens. A number of interesting teaching strategies can be used to make this learning meaningful and lasting. For instance, students can be asked to report to class on the various aspects of each state court. To obtain information, students may consult a practicing attorney or a court officer. Care must be exercised that students do not overstep bounds of propriety and annoy busy people with endless interviews. This often happens to young, inexperienced teachers who in their enthusiasm do not realize that ten students asking to interview a single individual can cause resentment. The teacher should know whom the student is going to interview and what questions are going to be asked. If the student is taping the interview permission must be asked at the time of the initial request for the interview.

An exceptionally interested student might be asked to study and explain the maxims used in equity courts. A review of a current equity case in the local news media may reveal some insights of this important civil court.

Students might be asked to procure the current docket of a local Common Pleas Court. Local papers publish information about court trials that can be used in class. (Over the years, a business law teacher should collect and keep on file numerous cases of local interest. Even though not current, these cases usually contain names of local residents known to the students.)

A visit to the classroom by an attorney, a magistrate or a court clerk is one of the many possibilities of making courts and court jurisdictions come alive for the students.

COURT PROCEDURES

Young people are keenly interested in court proceedings because they inherently enjoy action, and even the dullest cases contain an element of drama. The teacher does not need to create motivation in this area; however, student interest needs to be channeled in the right direction—away from certain unrealistic TV presentations of court trials. Student interest can be further stimulated by arranging a field trip to a local courthouse to observe an actual trial.

The Pennsylvania Bar Association, through its county affiliates, welcomes student groups and arranges programs for them. These visits usually include a tour of the courthouse, a short talk by a judge or other of-

ficer of the court and a visit to a courtroom to witness a trial. Some county bar associations have deviated from the procedure and set up mock trials in which students act as participants as well as members of the audience.

To be of the greatest benefit, a trip to the courthouse should be made only after the students have become familiar with all aspects of courts and trial activities. Prior to a visit to a courthouse, the teacher and the students should develop a guide sheet to be used by the students. A guide might include the following questions: Is this a civil or criminal case? Who is the plaintiff in a civil case? What is the name of the district attorney in a criminal case? Was there a jury? If not, why not? Was this an equity case? How was the jury chosen? How many challenges were there? How did the attorneys get at the facts of the case? Did the judge intervene in the questioning? How did you feel about the plaintiff and the defendant? Should your sentiments interfere with your verdict if you were called to jury duty? What did the judge say when charging the jury? Do you think the law is fair? If you stayed long enough to hear the verdict, what was the verdict and do you agree with it? If you did not stay for the verdict, what do you think the verdict might be? Where can you find this information? Answers to these or similar questions should be discussed in class the day following the court visit.

Case Categories

Students should know that there are criminal and civil trials. The former far exceeds the latter in the number of cases tried since there are far more transgressors against the laws of society than there are civil disputes between citizens. Criminal and civil case procedures have many basic similarities as well as a number of differences. Students should know that the formality of the proceedings in either a civil or criminal case is not arbitrarily imposed by the presiding judge but that it evolved over many years to give the greatest protection to the litigants.

Criminal Cases. Criminal cases are those where the state, in its effort to promote "domestic tranquility," seeks to restrain or punish those who commit acts harmful to the welfare of society.

The duty of the "people" in the person of the prosecutor or the district attorney is to present the facts which will prove "beyond a reasonable doubt" that the person charged with a crime is guilty. The students should learn that in criminal cases the burden of proof of guilt is always on the state because, under the United States Constitution, every accused person is presumed to be innocent until found guilty.

Civil Cases. In civil cases the dispute is between two parties, one of whom tries to prove that he or she has been wronged by the acts (or nonperformance) of the second party. The defendant has the right to answer the complaint and offer evidence that (1) the facts alleged are wrong, (2) there are other pertinent facts that excuse the defendant from liability or

(3) there is no point of the law involved if the facts are as stated in the complaint. Civil cases are won by the greater weight of evidence. Many civil cases are submitted to arbitration or are settled out of court. This is impossible in criminal cases. (The teacher must be ready for this question: What about plea bargaining? The class will be eager to hear the teacher's answer. Students generally understand that theory and fact do not always coincide in this imperfect world if the teacher's answer is forthright and honest.)

Court Trials

The entire trial procedure may seem unnecessarily time-consuming to the students, and they may wonder why the process could not be made more simple and expeditious. Here a teacher can explain that in certain courts—family, juvenile, divorce and traffic—the procedures are simplified due to the repetitive nature of the problems that come before these courts. In other cases, the rigid structure of a formal trial is followed, and there is no deviation from the long-established procedures as a safeguard to all who come to trial in American courts. By assigning definite roles to all concerned and by adhering strictly to set procedures, undue influence of men and women is minimized. American jurisprudence prides itself on being characterized as justice based upon laws, not upon whims of men and women involved in a trial.

Trial Procedures. The trial process begins with the selection of a jury and then the presentation of the facts through exhibits and the testimony of witnesses. The conclusion of the testimony is followed by a summation by the attorneys on both sides. The judge charges the jury by explaining the points of law involved in the case. After deliberation, the jury renders its verdict.

Disposition of Criminal Cases. In criminal cases, the defendant may be found not guilty and released from custody. The defendant may be found guilty, in which case he or she may be (1) placed on probation or in an accelerated rehabilitation program, (2) sentenced to imprisonment and/or (3) fined by the court.

Disposition of Civil Cases. In civil cases the judgment is rendered against one of the parties by the jury or by the court in a nonjury trial. If the amount of the dispute is less than $5,000, the case may be submitted for arbitration before a panel of three local attorneys appointed by the court. In either procedure the party against whom the verdict is rendered may be required to pay all trial costs and other sums granted by the verdict. In some cases, the loser also must perform certain specified acts as directed by the verdict.

COURT PERSONNEL

Students should become familiar with the following court personnel and their duties in Pennsylvania courts:

Judge is the chief officer of the court in charge of the trial.

Bailiff keeps order in the court, opens and closes court sessions, has custody of prisoners and conducts juries to and from jury rooms. In larger jurisdictions there may also be a tipstaff who shares these duties.

Prothonotary, the court clerk, keeps records of all cases. In larger judicial districts, there is a separate clerk of courts for criminal cases only.

Court Stenographer records and transcribes court proceedings.

Jurors are lay people selected by the court to hear a case and render a verdict. In Pennsylvania there are 12 jurors on a panel or trial jury called a petit or traverse jury. By recent legislative action, the number of jurors may now be reduced to create a smaller jury.

Attorneys-at-Law are members of the local bar association who have the responsibility to aid either the plaintiff or the defendant in civil and criminal cases.

ATTORNEYS-AT-LAW

Time is well spent in discussing the work of an attorney and the importance of his or her work in behalf of a client. Every business law teacher should stress that a business law course is not a substitute for the services of an attorney. There is an adage which states that "a man who acts as his own attorney has a fool for a client." Students should understand that a business law course presents the foundation of legal knowledge to be used in knowing when the services of an attorney are needed. However, once the attorney is retained, a student who has studied business law will have an excellent base upon which the two can understand each other and the role that each is expected to play in the successful completion of the legal matter at hand.

Teachers should explain that attorneys are qualified officers of the court who have the implied authority to conduct the client's side of the court proceedings in civil and criminal cases. While attorneys neither make laws nor dispense justice, their experience in legal matters often enables them to advise their clients of the probable outcome of a lawsuit and the advisability of initiating proceedings. They can prevent the client from signing legal documents which may later cause litigation.

Much information concerning duties, compensation and remuneration of attorneys may be found in newspaper supplements and paperback books—all easily available to the students. Material is current and edited for the general public. It makes excellent bases for assigned reading, reports and general classroom discussion.

Such discussions should include specific instances (with examples) when the services of an attorney should be retained to make sure that the

students do not labor under the mistaken impression that attorneys should be retained only in a case of civil or criminal suit. Students should understand that:

1. An attorney should be consulted before signing any important legal document. For example, contracts involving large sums of money, long-term leases and agreements for the purchase or sale of real estate.
2. An attorney should help write a will, settle an estate or establish a trust.
3. An attorney should be consulted in settling any claim involving bodily injury.
4. An attorney should be retained whenever a person is implicated in a serious crime, whether one is innocent or guilty.
5. An attorney should be employed if the other party to the dispute has employed an attorney.
6. An attorney should be retained to help solve complicated problems with administrative agencies of the state or federal government.
7. An attorney should be consulted in private matters, such as the adoption of children, divorce, legal separation and bankruptcy.
8. An attorney may be important in establishing a corporation or a partnership.

Even though a recent court decision allows attorneys to advertise, such advertisements are limited to categories of expertise and not to the quality of attorneys' services. Furthermore, in spite of liberalization of the nonadvertising rule, many attorneys do not advertise as a matter of status and principle. Therefore, anyone seeking legal advice should consider the following:

1. Friends who have employed an attorney and found him or her satisfactory, fair and knowledgeable often will recommend this individual.
2. Personnel at banks and other lending institutions with whom an individual has had some association often will recommend an attorney.
3. Some large companies have a legal staff on their payroll. Employes with legal problems may ask this staff to recommend some one competent in the specific legal matter at hand.
4. Some unions have attorneys who may be willing to help their members for a nominal fee.
5. Lawyers Referral Service of Pennsylvania is conducted by the state and county bar associations. This service will try to put the prospective client in touch with several attorneys listed with the service. For nearest Lawyers Referral Service, write to: Lawyer Referral Service, 100 South Street, Harrisburg, PA 17108, or Standing Com-

mittee on Lawyers, Referral Service, American Bar Association, 1155 East 60 Street, Chicago, IL 60637.

6. There is a Legal Aid Society in many cities and many county seats which will provide legal service at little or no cost for those with limited means.
7. The court may appoint a public defender for indigent clients.
8. The Martindale-Hubbell Law Directory, Summet, NJ 07901, contains information on qualifications, experience and specialities of attorneys. Numerous large libraries have this publication available.
9. Finally, students should be made aware that certain handicapped persons receive legal aid free. At Gallaudet College for the Deaf in Washington, D.C., "Congress contributes 90% of Gallaudet's operating costs as well as grants to operate model elementary and secondary schools for the deaf and a center that provides legal advice on request from the 14 million people in the U.S. who are deaf or have severely impaired hearing."[1]

Students should be aware that a relatively new form of legal service is now available to middle-income business persons who have been affected by the costs of legal services. This new service is called *legal clinic* by the legal profession.

A legal clinic is a private law firm where charges are reduced up to 50 percent because all legal work is streamlined with heavy emphasis upon paralegal assistance. Legal clinics are geared to handle large client volume and, therefore, take only routine cases—divorce, wills, personal-injury suits, contract disputes, real estate transfers, title searches, etc. There are presently about 20 working legal clinics in large cities in the United States, and the trend is spreading throughout the nation.

Law has many branches, and one attorney cannot be equally knowledgeable in all or even several of these branches. Many attorneys spend their entire careers specializing in one or two branches of law to the exclusion of others, such as patent and copyright law, real estate law, bankruptcy law, corporate law, trust and probate law, criminal law and divorce law. Teachers should acquaint the class with each of these broad categories of specialization, thus enabling students to seek the attorney specializing in the branch of law in which they need assistance.

Finally, the teacher and the students should discuss the three most prevalent methods of reimbursement for the services rendered to the client. The most common remuneration is an outright negotiated fee either on an hourly or on a completed-job basis. The second method of payment is a retainer. This represents a yearly sum paid for minimal services rendered with adjusted fee for additional services. This method is used by those businesses and institutions which are not large enough to have their own legal departments but feel that they must have an attorney

[1] Time Magazine, "Quiet College" June 14, 1976, p. 79.

available at a moment's notice. The third method of payment is a contingent fee agreed upon when the case is taken with the understanding that there will be no payment unless the case is won; then, a prearranged percentage of the award goes to the attorney.

TEACHING SUGGESTIONS

Legal fundamentals present a particular challenge to the business law teacher. The material found in business law textbooks is of necessity general in character. This material should be adapted to the specific judicial system in Pennsylvania to meet the needs of students who reside in the Commonwealth. The following suggestions are offered as examples of several successful approaches.

Class Notes and Notebooks

All business law students should be required to keep a notebook containing class notes, vocabulary lists, marked tests, newspaper clippings, research papers and any other pertinent material related to the course. These notebooks should be checked periodically to determine if they are current and neat.

Students should be informed at the beginning of the course that class notes are the most important part of their notebook. The importance of notes varies from unit to unit, but it is of special importance in the material concerning court structure, court procedure and court personnel since these areas are not stressed in most business law textbooks. In many areas—such as the court system of the Commonwealth of Pennsylvania—the teacher becomes the sole source of information. To expedite matters and conserve time, some teachers distribute duplicated material with the instructions that the students are responsible for the information contained in this material. Many experienced teachers develop this information together with the students as a class procedure. In the hands of a skillful teacher the final notes will be substantially the same as the duplicated copy; yet, the students will feel that they had a part in developing the information. This increases desire for learning and creates a better classroom atmosphere.

Role-Playing

This unit presents many opportunities for role-playing. For instance, students can present a court trial in a classroom using available furniture for props. Students can present a scene of the first visit of a client to an attorney, at which time the attorney's qualifications and remuneration are discussed.

Reports

Most high school students are not too young to research short topics, especially if research material has been set aside in the school library. The following is a partial list of research projects which evolve from the study of courts and court jurisprudence:

Duties of Bailiff, Prothonotary, Presiding Judge, etc.

Parole, Its Use and Abuse

Summary Offenses and Their Penalties

History of Common Law

Personal Conflicts (Bankruptcy, Divorce, Non-Support, etc.)

Jurisdiction of Any One of the Federal Courts

Any Recent Supreme Court Decision — State or Federal

Statutory Law

Traffic Violations

This list can be expanded to include a research topic for every member of the class. These reports can be oral or written at the discretion of the teacher.

Speakers

Teachers will find that students need little outside motivation when considering attorney-client relationship. However, the teacher might inject a note of realism into this area by inviting either a local attorney or a law clerk to speak to the class. These requests are seldom refused by local practicing attorneys as they consider them a public service. If a choice is given, a young paraprofessional working in a law office is often a better choice because the students are less hesitant to ask questions of someone nearer their age.

Class Discussion

Nothing takes the place of a well-prepared lesson plan which incorporates class participation. All experienced teachers know that such class participation does not come automatically. Teachers must come to class prepared to lead and control all discussions by having on hand a prepared list of topics, subtopics and leading questions which he or she wishes to consider. The less experienced the teacher, the more detailed such a list should be. Also, the less academically-minded the class, the more detailed should be the teacher's preparation. This does not mean that all extemporaneous discussions must be barred. Students should be given considerable leeway, for in no other way will the objectives of the course be met.

CHAPTER SIX

Teaching Law as Applied to Contracts

Law is a form of order and good law must necessarily mean good order.

—Aristotle

The study of contracts is probably the most important phase of business law because general principles apply with equal validity to all forms of agreements—insurance, sales, bailments, leases, deeds, warranties, etc. The knowledge of these general principles is as important to a young adult as it is to a large business enterprise. In modern society, neither a corporation nor an individual can go through life without incurring contractual obligations.

In spite of an abundance of available teaching aids, high school students tend to find the study of contracts highly technical unless every effort is made to make the study relate to their age and experience. Unfortunately, many student associate contracts with formal documents couched in legal language, written and interpreted by attorneys. To counteract this misconception, teachers may find a simple substitution of terms helpful in showing the students the commonality of contractual obligations and their relative simplicity. For instance, the term mutual agreement might be used instead of contract. Furthermore, teachers might explain that the vast majority of these agreements are informal, oral and often implied from the action of the parties. For example, the purchase of a ticket is an agreement between the purchaser and the transit company to allow one to ride to one's destination.

The following assignment has been used to reinforce the simplicity and the commonality of oral and implied agreements. Students are asked to list five oral and five implied agreements in which they personally participated within the last two weeks. For example, the purchase of a movie ticket represents an implied agreement while a request to "fill up the tank" is an oral agreement. A compiled list of the most frequently mentioned agreements can be posted on a bulletin board.

To explain to the students the involvement of government in enforcing agreements between citizens, teachers might take time to trace the historic evolution of contracts. Students should know that since prehistoric times when men and women first learned to live in groups or tribes, the welfare of the entire tribe often depended upon the integrity of all its

members to perform certain acts as promised. For its self-preservation, the tribe enforced these promises through moral sanctions and/or physical punishment.

As civilization evolved, simple promises became promises under oath, and oral promises under oath developed into written agreements under seal, and the whole body of contractual law came into being. As governments became more complex, the enforceability of agreements which once was the prerogative of chiefs and kings became the province of courts where it remains today.

Teachers have used the following assignment to advantage to show students the necessity of enforceability of contractual obligations in our economic life. Students are asked to choose one area of human endeavor and imagine what would happen to our social order if the agreements related to this endeavor were suddenly unenforceable. Areas considered might be nonpayment of wages, refusal of an insurance company to pay for health care as contracted, nonpayment for goods delivered, nondelivery of prepaid goods, etc. Teachers who have tried this assignment find that students show a great deal of ingenuity in their choice of areas to be considered and the potential havoc ensuing from contractual breach. In the process they learn that contracts deal with vital matters and not legal abstractions.

CLASSIFICATION

The following classification of contracts is included for quick reference by business law teachers. This classification is helpful to the teacher who may be teaching the course for the first time. The list may be used as a starting point in the study of contracts or as a review at the end of the unit.

All contracts fall into the following categories:

1. Express (written or oral) or implied (judged by actions of the parties)
2. Simple (contracts that are informal, unsealed, oral or written) or formal (contracts requiring a seal and/or a writing)
3. Void (defective for a variety of reasons), voidable (by one party only), or unenforceable (by either party)
4. Bilateral (two-sided or two-party agreement) or unilateral (one-sided or one-party agreement, such as an option contract)
5. Executed (completed) or executory (incomplete)
6. Entire (can be performed only as a whole) or divisible (parts can be completed separately)

SUBJECT MATTER

Subject matter—what the contract is about—is the essence of any contract. The subject matter may include almost anything not specifically prohibited by law, not an infringement upon the rights of innocent parties and not contrary to public policy. The subject matter generally falls into three categories—contracts dealing with purchase, sales or transfer of goods and property; contracts dealing with performance of certain acts and services and contracts curtailing certain acts that are legal rights of the parties.

Teachers have an opportunity to discuss values and changing social mores with the students to broaden their concept of public good versus private gain. Discussion should be encouraged and curtailed only when it wanders too far afield.

ENFORCEABLE ELEMENTS

To be enforceable a contract must be valid in all its component parts as prescribed by law. Some textbooks list five such elements, others six. If offer and acceptance are to be considered as two separate elements—and students understand it better that way—the number of elements of an enforceable contract becomes seven.

1. Definite offer (written, oral or implied)
2. Definite acceptance
3. Competence of the parties
4. Mutual agreement as to the subject matter (substance)
5. Valid consideration
6. Legality of purpose
7. Required form (for instance oral contracts are unenforceable for sale of land)

The most difficult and time-consuming areas in the study of contracts include the mastery of the above elements. There are two successful ways of handling this material: a fairly quick overall presentation of each element with dependence upon case study to reinforce the knowledge or a method whereby each element is studied in depth before proceeding further. The choice depends upon the teacher, the group and the time available. The following material is included for the teachers' convenience and may be used as the basis for lesson plans, student notes or final review.

Offer

Offer, the first element of a valid contract, is probably the most difficult for a student to understand. Teachers should explain that an offer must be definite, not made in jest or anger and must be communicated to the offeree. An advertisement and a form letter usually are not offers. A personal letter may be an offer. Students also must be made aware that

no offer continues indefinitely. The law makes provisions for its termination by the time stated in the offer itself, death or insanity of one of the parties, counter offer made by the offeree, rejection of the offer and lapse of reasonable time.

Acceptance

Students should understand that the acceptance must be definite. It must be exactly for what is offered or it becomes a counter offer. Futhermore, an acceptance must be made by the person or the group to whom it originally was made.

Students should understand that silence usually means that an acceptance has not been made. Students should be warned that if the offer states a definite manner of acceptance, it must be accepted in that manner. The Uniform Commercial Code states that an offer may be accepted in any reasonable manner.

If time allows, students should be assigned projects in which they write at least one valid offer and explore ways in which it can be accepted or rejected. Enterprising students will acquire telegram blanks and use them for both an offer and an acceptance. Others will write detailed letters and answer with acceptances or counteroffers. Teachers will find that many students will use their imagination in completing these assignments. Offers of exotic animals and abandoned gold mines have been subjects of offers.

The following ingenious correspondence was offered by a high school senior as part of the above assignment:

An example of an offer is:

XYZ Corporation
New York, NY 10011

To whom it may concern:

We are pleased to offer one six foot cobra for $350 cash, shipping charges prepaid by us. The above price includes a brass plaque with inscription, "These premises are protected by a live cobra." We guarantee you will have no illegal entries. Our cobras are gentle but they bite hard.

May we hear from you by letter within the next five days.

Sincerely yours,

Jones Snake Farm

An example of an acceptance is:

Jones Snake Farm
Miami, FL 33182

To whom it may concern:

Please ship me one cobra and one brass plaque. I enclose my check for $350. I was robbed last night.

Sincerely yours,

XYZ Corporation

An example of a counter offer is:

Jones Snake Farm
Miami, FL 33182

To whom it may concern:

I like your idea of snakes protecting my factory but do you have something larger, like a boa or an anaconda. My place is large.

Sincerely yours,

XYZ Corporation

Options

The role of options as they deal with acceptances should be discussed. An option is not an acceptance; it is a payment of a sum of money to the offerer to hold the offer open for a specified period of time. Understanding the role of options is particularly important to the students who, when they become adults, may be interested in purchasing real estate. All students should see a copy of a standard option. These are found in many legal secretarial reference books.

Legal Capacity of Parties

Students should know that an enforceable contract must be made by people who are capable of understanding the nature of the agreement and its consequences. The adult population generally is considered competent to make contracts which are binding upon all parties.

Incompetent Parties. There are several groups of people who are not considered competent in the eyes of the law. The following groups are considered incompetent to make contracts except for certain goods and services:

1. Minors (those who are under 18 years of age)
2. Mentally ill and/or mentally deficient persons regardless of age (This group is less likely to make voidable contracts because courts usually appoint guardians to enter into contractual obligations in their behalf.)
3. Persons under influence of alcohol or drugs

4. Enemy aliens under conditions of war

Enforceable Contracts with Incompetent Parties. Certain contracts are enforceable with incompetent parties because of their substance. These contracts are for necessities, such as food, shelter, clothing and medical care of the incompetent. Quasi contracts, such as payment of taxes and court judgments, also are considered binding.

Teaching Contracts to Minors. High school students are interested in the law of contracts as it affects their age group. This information is relevant and important to them. They may find resistance from merchants to sell goods without countersignatures of parents or guardians.

Teachers must do more than teach students that law protects their rights because of their age. They should explain that while this protection affords minors a safeguard "the law merely provides the minor with a shield and not a sword." This legal maxim means that minors who misrepresent their age or engage in fraudulent dealings are liable to criminal and civil charges much the same as the rest of the population. Students should be made aware that even though they are protected by law, as young people they are laying a foundation of trust, credit, good character and citizenship which will serve them in good stead when they become adults. The responsibility and the positive attitudes which are the obligation of all minors in their business as well as private dealings should be discussed in class. A local businessperson might be asked to speak to the class on this matter. A group of students could be sent to a local bank to discuss the importance of credit ratings with a credit manager.

Mutual Assent

To be enforceable a contract must be a genuine agreement between parties. An honest error on the part of both parties nullifies the contract with neither party considered at fault. There are, however, four areas which make contracts unenforceable and which may lead to criminal and/or civil suits.

1. Students should understand that there is a difference between a mere expression of opinion and a misrepresentation. For example, "I think this automobile is a good buy" is an opinion. Inducing a person to contract for the purchase of an automobile with low mileage when the odometer has been turned back in a false representation of fact.
2. Fraud is a definite falsification of facts which may make the contract void and may subject the person guilty of fraud to prosecution under the criminal code. To avoid prevalence of fraud in contracts, the Parol Evidence Rule has been established. Teachers should explain that the Parol Evidence Rule means that no oral evidence is admitted to counteract the substance of a written contract. Oral testimony is limited only to explanation and/or clarifi-

cation of intentions of the parties and habitual business practices in the areas in question.

3. Duress—a threat of bodily harm to oneself or to one's loved ones—makes any contract voidable or void.
4. The undue influence concept is much more difficult to convey to students. Teachers might explain that if a principal, a parent or a close relative urges someone to sign a contract this may constitute undue influence because the signor is less apt to be on guard against deception of falsehood from that person rather than from a stranger.

Consideration

Areas of law surrounding consideration may seem arbitrary, complex and confusing to the student. Probably the best way to explain consideration in contracts is to inform students that to make a valid contract a promise must always be given for a promise (quid pro quo), a promise in exchange for an act or a promise in exchange for a forbearance. The actual value of the consideration is unimportant; and nominal consideration often is listed when parties wish to keep the true value private—as in a sale of property for "one dollar and other valuable consideration." A consideration need not be money, although it very often is. Consideration can be goods, services, acts of various kinds or anything of value to either party. The fact that each party is giving up a lawful right supplies consideration to bind the parties.

Legality of Purpose

Students do not have difficulty in understanding that a contract cannot be valid if the subject matter of the contract is illegal. No contract is valid if its purpose is to commit a civil wrong, felony or misdemeanor; corrupt a public official with a bribe; restrain trade, limit competition or set prices; gamble (except where specifically permitted by law); commit usury by charging excessive interest as in "loan sharking"; corrupt justice by paying for false testimony or for prevention of testimony; subvert private citizens from doing their duty; conspire to circumvent licensing laws and interfere with the institution of marriage and family relations.

Required Form

Students should know that certain contracts, because of their subject matter or time duration, must be in writing or evidenced in writing to be enforceable. These are

1. contracts for the sale of real estate,
2. contracts which cannot be completed in one year,
3. promises to pay debts of another person,
4. promises made by executors or administrators of an estate,

5. sale of goods contracts where money involved is over $500 and
6. promises in consideration of marriage, as dowry, for example.

The actual form of these contracts may be something as simple as a signed purchase order or as complicated as a deed. Contracts need not be formal or written in legal language. Contracts may be letters, telegrams, memoranda or a combination of all three. All written contracts must contain the following elements: date of the agreement, place where it is made, names and addresses of the parties to the contract, subject matter of the contract, consideration to sustain the contract and signature of both parties.

Many students have access to old purchase orders, old deeds, leases, sales contracts, insurance policies, etc. Therefore, the subsequent assignment has proven worthwhile in expanding their knowledge of various types of written contracts. Students are asked to bring to class samples of as many written contracts as they are able to find. After students have had an opportunity to handle and read these contracts, a very interesting display can be put on the bulletin board entitled, "Samples of Written Contracts."

Practical Value in Factual Knowledge of Valid Contracts. Students should be made aware of the practical value of being familiar with all elements of valid contracts because adults continually are confronted with contractual obligations. Courts are swamped with litigations arising from misunderstandings, mis epresentations and outright fraud which is perpetuated upon unsuspecting persons who sign contracts without understanding or reading their content.

Students should be taught to read contracts carefully and to check all pertinent information. A course in business law will not make students knowledgeable enough to write contracts that require the services of an attorney, but instruction in this area can help students become aware of glaring errors and omissions.

To accustom students to scrutinize any legal paper they are asked to sign, the teacher might construct and duplicate a number of simple to progressively difficult contracts each containing subtle but important errors—inverted figures, misspelled names, incorrect addresses, wrong dates and omissions of pertinent facts. Students should be asked to find the errors and submit a revised copy of the contract. Sufficient practice in detecting errors will create a lifelong habit of scrutiny which eventually may stand the students in good stead in preventing difficulties arising from hastily signed contracts.

Public Policy. Business law teachers should take every opportunity to encourage students to develop their own set of values. Such an opportunity presents itself in teaching elements of valid contracts, contractual obligations incurred in signing a contract and fraud and misrepresentation as they occur in the market place. Students should understand why public policy protects minors and what obligations minors have irrespective of this protection.

Public policy as a term and a concept needs clarification because of its importance in the lives of young people. Public policy, its evolution and its preservation through public opinion, decisions of courts and statutes enacted by legislatures should be the subject of discussion by the class. Students should be asked to write short papers explaining their views and attitudes toward a number of current controversial subjects, such as human rights, women's rights, legalization of "soft" drugs, obligations of minors and credit ratings, that are of particular interest to them as young people just entering adulthood.

Because of the ever-increasing skepticism and cynicism among the young toward constituted authority and existing values, much needs to be done to create desirable attitudes in young people as they grope for their own set of values by which they are going to live as adults and which ultimately will influence public policy of the future.

CONTRACTS IN OPERATION

Business law teachers are constantly faced with the dilemma of making a complicated subject area simple enough for high school students to understand and yet meaningful and practical in its application. Teachers should explain to the students that contracts are tools of business which facilitate transactions between individuals and organizations. Contracts set certain actions in motion. They are designed to perform certain functions without which much of the business of our society could come to a standstill. The operation of contracts—even though they are the concern of private individuals—is the subject of numerous statutes and case law or precedent.

Termination of Contracts

Students should understand that all contracts expire even though that end may be many years hence—ground rent, for instance, is often for a period of 99 years. While contracts terminate in a variety of ways, teachers should make clear to the students that the majority of contracts are terminated by performance and mutual satisfaction of both parties. A suggested teaching strategy is to give students a comprehensive list of items to be reviewed prior to discussion. Students will find helpful the following list of contractual terminations which are not listed as such in textbooks.

1. Contract is terminated by performance and mutual satisfaction. The majority of contracts fall in this category.
2. Contract is terminated by mutually satisfactory substitution where such substitution is minimal and not injurious to either party.
3. Contract is terminated by performance in reasonable time if no specific time is stipulated in the contract.
4. Contract is terminated by mutual agreement to dissolve the contract.

5. Contract is terminated by waiver on the part of one party to release the other from the contract.
6. Contract is terminated by novation, a term meaning that a new contract is substituted for the old one by mutual consent.
7. Contract is terminated by rescission, a term meaning that a contract is canceled as in the case of annulment, by the act of one party or by a court of equity.
8. Contract is terminated by breach in which one of the parties breaks the agreement unilaterally without the consent of the other.
9. Contract is terminated due to changes in law made after the contract is written.
10. Contract is terminated due to destruction of the subject matter of the contract. A contract to paint a house which burns down is considered terminated.
11. Contract is terminated by lapse of time as listed in the Statute of Limitations. In Pennsylvania all open accounts, notes and simple written contracts lapse after a period of six years, where no time period is specified. Contracts under seal and judgment notes are valid for twenty years.
12. Contract is terminated if one of the elements which makes a valid contract is found to be defective or missing.
13. Contract may be terminated by fraudulent alterations of the contract, duress, undue influence or other wrongful acts of one of the parties.
14. Contract may be terminated by death, incapacity or insanity of one of the parties.

Operation of Law in Termination of Breached Contracts

From the preceding information, students learned that all mentally competent adults not only may enter into legal contractual agreements but also they may freely alter or cancel such agreements whenever they mutually so desire without legal interference. However, in the interest of public policy and the smooth running of business affairs, law provides many remedies for unilaterally broken contracts. Yet, even when called upon to arbitrate in contractual disputes, the courts are governed primarily by common sense and not punitive justice.

The powers of the court to give remedy to the injured party are many. They include money damages, specific performance, attachment of property, injunction by forbidding certain acts, mandamus by compelling certain acts, right of replevin to recover one's goods and bankruptcy laws for discharging debts of insolvent persons as equitably as possible. Teachers should discuss each power of the court and ask students to construct cases where each would be applicable.

Operation of Law in Cases of Insolvency

Bankruptcy laws have their roots in the English Common Law which treated debtors as criminals, jailing them and thus precluding their ability ever to get out of debt. Students will find a wealth of interesting background information on this subject in any high school library. Teachers might recommend reading Charles Dickens' classic novel, *Little Dorrit*, which has as its theme the treatment of debtors in England.

Teachers might mention that the American Federal Bankruptcy Act of 1898 (amended in 1938) was a reaction to the treatment of debtors as late as the Nineteenth Century. The philosophy behind this law was that it allowed hopelessly indebted persons once more to lead productive and constructive lives as tax paying citizens by relieving them of their burden of debt. Bankruptcy laws never were meant to encourage reckless spending and irresponsibility on the part of individuals. Bankruptcy laws are meant to be a "life belt for drowning persons" and no more.

Because of many abuses by individuals and the need to bring an outdated act in line with current social and economic problems, Congress has rewritten the Bankruptcy Act, now entitled "The Bankruptcy Reform Act," which became effective in October 1979. Students nevertheless should be advised that many bankrupt persons make full restitution to all creditors in later years as their financial positions improve. Once again, teachers should encourage discussion on the part of the students as to their feelings about the philosophy behind the bankruptcy laws and if and when insolvent individuals should take advantage of such laws.

Students should understand that bankruptcy is a legal term. Insolvency is an economic term meaning that the person has more liabilities than assets. It does not mean that legal procedures are involved. Many people are insolvent for years. Bankruptcy always means legal involvement in Federal courts especially established for that purpose. Anyone who is insolvent may become a voluntary or an involuntary bankrupt except railroads, insurance companies, banks and savings and loan associations. These institutions are governed by separate statutes wherein their fiscal problems are given special consideration.

Bankruptcy proceedings are quite simple if the debtors are acting in good faith. They are conducted by a federal bankruptcy judge and are under the supervision of the Federal District Courts. Essentially the procedures include:

1. Filing of a petition of bankruptcy which lists all assets and liabilities of the debtor.
2. Appointment of a receiver by the court pending the appointment of a trustee, if there are substantial assets.
3. Appointment of a trustee representing creditors who is charged with running a business if necessary; receiving and processing all claims against the debtor; selling all assets at the best possible

price and paying all debts, such as mortgages and liens, taxes and wages due and settlement of all other lawful claims.

4. Discharge of the bankrupt by the court wherein many of the bankrupt's debts are legally dissolved, making it possible for him or her to begin economic life anew.

The new Bankruptcy Act provides greater flexibility for unfortunate debtors in personal bankruptcy cases. It permits and encourages persons to avoid bankruptcy, but have the protection and supervision of the bankruptcy court until part or all of the debts have been paid, thus avoiding bankruptcy.

ASSIGNMENT OF CONTRACTS

Not all contracts remain in the hands of the original contracting parties—sales agreements are sold by stores to banks or collection agencies, subcontractors are delegated by the original contractor to perform certain duties on the construction site and liens and mortgages are transferred to third parties. Figure 4 should make understanding of contract law clearer to the students.

The transfer of rights, benefits and obligations of contracts generally can be transferred to others as long as they do not materially affect the substance of the contact. However, students should understand that the rule applied to all assignments is that a party to the contract cannot transfer more than his or her interest in the contract.

Several contractual arrangements are made by operation of law. In case of

1. bankruptcy, all contracts are transferred to a trustee appointed by the court.
2. death, all contracts are transferred to administrators or executors of the deceased.
3. mental incapacity of one of the parties to a contract, his or her share is transferred to a court appointed trustee.

The law provides that certain contracts are not transferable under any conditions. These include

1. claims against the United States Government,
2. rights to special services if these services are unique and personal as in a picture to be painted by an artist,
3. relations of trust and confidence and
4. assignment of future wages under certain conditions.

Assignment of contracts probably will affect students in their adult life to a lesser degree than other aspects of operation of contracts. However, students should be made aware of their right to notification if any contract signed by them has been transferred to another. Students also should know that the substance of the contract, as for instance the terms of payment of a debt, cannot be changed when the contract has been transferred to a third party. The principle of assignment of contracts is

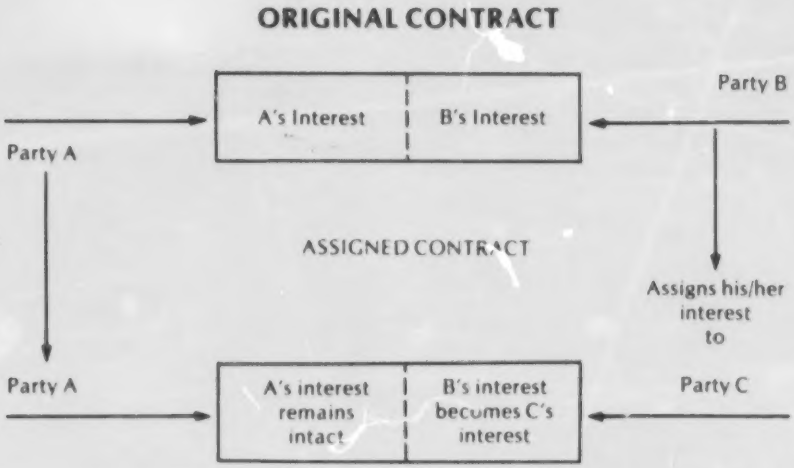

FIGURE 4

that the assignee merely "stands in the shoes of the assignor and receives the right of the assignor." The assignee's rights cannot be greater than the assignor's, and if the rights are defective, the defect flows with the assignment.

Case Study

Of the many teaching strategies available to teachers in presenting the various aspects of contracts and their operation, a most effective strategy is the analysis of selected cases. These cases usually are included in the textbooks used by the class and/or supplementary material which can be purchased from a publisher of business law textbooks.

A case study teaches students to think logically and to express themselves in precise terms, adds realism and emphasizes the various aspects of contracts as they operate in their daily lives.

Teachers should advise students that the study of cases deals with

1. material facts as stated in the case—meaning facts relevant to the legal aspects of contracts in their operation,
2. legal principle involved in the case and
3. decision on the basis of the above two.

One of the most difficult phases is teaching students to distinguish between the material facts in a case and the principle of law which might apply in each particular case. The term facts applies to the set of circumstances surrounding the existence of a contract. Material facts are those which are essential to legal action.

A legal principle may be defined as a universally accepted rule which when applied to certain material facts clearly indicates how the case should be decided.

In assigning cases to the students, teachers might bear in mind the following:

1. Students are not to read between the lines or infer anything that is not clearly stated in the case. Students with above average ability tend to infer circumstances which have little or no bearing on the material facts of the case.
2. Students should know how to distinguish between material and immaterial facts. Age at the time the contract is signed is a material fact since minors have special privileges. Names of the parties are immaterial because we are a society of laws.
3. Students should be capable of stating each legal principle involved in precise terms.
4. Students should be required to analyze the problem and to present it in appropriate language. Teachers should not accept rambling answers in an oral presentation.

Teachers will find case study rewarding in the interest it generates among students. As an integral part of the course, case study is an invaluable strategy to foster learning and logical thinking. However, as with all good strategies, it is only effective when used judiciously and not to the exclusion of other equally good teaching methods.

CHAPTER SEVEN

Contracts Dealing with Property

Law is human wisdom acting upon human experience for the benefit of the people.

— Thomas Jefferson

Contracts dealing with property are the most numerous and the most intricate of all contracts with which students will deal in their lives as adults. Teachers will find that the study of law dealing with property can be greatly facilitated if students first learn that there are two classes of property—real estate and personal property—and that law treats each type differently in matters pertaining to possession, sale, transfer, payment, passing of title, collection of debts and other legal matters.

Instead of giving students a general definition of each type of property, students first might be asked to compile a comprehensive list of all types of objects that they or their parents own and that they consider "property." A list might contain items, such as stocks, bonds, money, furniture, animals, house, barn, lot, grain, lumber, groceries, factory building and machinery. The diversity of these objects will help students realize that some are more similar than others in a number of aspects. By trial and error, under the direction of the teacher, students can evolve a definition of real as against personal property. Such a definition will be more meaningful to them than one dictated by the teacher. Thereafter, the teacher can concentrate on each category explaining its unique status under law.

PERSONAL PROPERTY

Personal property transactions involve the major portion of all business contracts entered into by individuals. Since these transactions generally outnumber other contracts which students will encounter as workers and consumers, teachers should endeavor to broaden the learning experience of students by presenting as many of the following aspects of these contracts as time will permit.

Sales Contracts

The basis of most personal property transactions are sales or contracts leading from sales. Students should realize that the function of business law is to expedite business transactions and minimize friction and subsequent litigation. Custom and experience have modified and simplified some general contractual rules in the interest of expedience and smooth flow of trade. Teachers should emphasize that in no way are the general rules of contracts which the students learned previously negated. These rules are merely simplified.

All these modifications and simplifications are incorporated into the Uniform Commercial Code. References to the Code are made in high school business law textbooks, but because no text gives an extensive background as to its history or content, the following information is included.

Uniform Commercial Code. Since much of the business transacted is interstate in scope, efforts have been made to bring about uniformity of law applicable to many types of dealings throughout the country. The result of this endeavor was the formation of the Uniform Commercial Code (UCC), a project of the American Law Institute and the National Conference of Commissioners on Uniform State Laws. Pennsylvania was the first state to adopt the Code in 1953. Since a number of states raised objections to certain sections of the Code as they originally appeared, a revised version was published in 1958, at which time Pennsylvania again was the first state to adopt the revised version. By 1970 the Code had been adopted by 49 of the 50 states—Louisiana being the only exception. In 1972 additional and important revisions were made in Articles 2 and 9, and these changes have been adopted by many states. The Article 2 revisions were not adopted in Pennsylvania. Recently, the Congress adopted the Code for the District of Columbia.

The UCC brings together several areas of business law which were once separate and distinct statutes. Prior to the adoption of the UCC, most states, including Pennsylvania, had a Uniform Sales Act which governed sales transactions. Today, the former Sales Act has been incorporated into the UCC as Article 2.

The articles (or sections) of the UCC are

Article 1 General Provisions;
Article 2 Sales;
Article 3 Commerical Paper;
Article 4 Bank Deposits and Collections;
Article 5 Letters of Credit;
Article 6 Bulk Transfers;
Article 7 Warehouse Receipts, Bills of Lading and other Documents of Title;
Article 8 Investment Securities and
Article 9 Secured Transactions, Sales of Accounts and Chattel Paper.

The purpose of the above provisions is to set forth the rules developed by the courts and legislative bodies over a long period of time and to make these rules uniform in all states.

Each article of the UCC is not all-inclusive of the rules governing transactions that fall within each section or article. For example, Article 2, Sales, includes only sales of personal property or commercial goods. It specifically excludes transactions involving transfer of title to real estate. The UCC also can be amended by individual states based upon its court cases and experience.

If an article of the Code is silent on a particular set of facts, a transaction may still come within the Code's general provisions as stated in Article 1, paragraph 103, which states: "Unless displaced by the particular provisions of this Act, the principles of law and equity, including the law of merchant and the law relative to capacity of contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions."

The above information is included for the use of the teacher. In most cases it is sufficient to explain to the students that such an instrument exists, its general content and what it hopes to accomplish in simplifying trade between contracting parties. Teachers should explain that while many of the provisions of the UCC are definite and explicit on many of its rules, these rules cannot be considered absolute answers to all legal problems involving commercial transactions. The law must be interpreted in light of the facts of a particular case and properly applied. However, the Code goes a long way in attempting to set the rules by which all competent parties must generally abide. The UCC reduces the number of legal problems which would otherwise clog the court calendars and impede commerce and trade. It attempts to define terms and to set boundaries under which transactions of personal property are conducted. The subsequent definitions should be explained carefully to the students so that they will become part of their working vocabulary.

Sale. Under the UCC, a sales contract may be a formal bill of sale, a memorandum, a telegram, a letter or an informal telephone order. A contract may state the total price, a unit price or the price may be negotiated later. Delivery may be required in full or in segments. Payment may be required immediately or at some future date. Sales are valid if made on approval with privilege of return. The UCC makes clear that prevailing business practices set the rules and limits of sales contracts between merchants. Students can be asked to bring to class samples of sales contracts as they are defined by the UCC. Those with relatives in business can bring to class some interesting and diverse sales contracts. All of these should be displayed for the benefit of the entire class. Those students who are unable to find examples of sales contracts can be asked to write

memorandums or telegrams or simulate telephone conversations which lead to a sales contract as defined by the UCC.

Title. The UCC defines title or ownership of goods as distinct from possession of goods. Under a sales contract, the buyer may receive title to the goods even while the goods are not in his or her possession. This requires a more detailed explanation by the teacher. First, students must understand that the title to the goods entitles the owner to its possession and use. Title also gives the owner the right to sell the goods, to confer by gift or bequeath the property by will. However, few students understand that the possession of the title carries with it certain responsibilities, such as the necessity to protect the goods against loss, to care for goods in the case of livestock, to comply with all local and state laws and to pay fees and taxes levied upon the goods. The teacher can list a number of special instances and ask the students to enlarge upon the privileges and duties in each case.

Goods. Since Article 2 of the UCC makes a specific effort to define goods as merchandise, inventory or stock, teachers should use the term "goods" in preference to any other synonym. "Goods" will be the term students will use in business and industry. Goods, as defined by the UCC, must be moveable or capable of being moved. Goods must be identifiable and/or capable of being set aside for the buyer either at present or at some future time. The UCC expressly excludes real estate, accounts receivable, insurance, patents, copyrights and labor and materials contracts as not being part of the definition of goods. Students should understand that all goods in a sales contract must be legal and conform to all local, state and federal laws governing inspection, labeling, packing and licensing regulations.

Students can be asked to list any number of goods which come under special regulations by governing bodies. Students should understand the necessity for such regulations, and the subsequent questions can be discussed. Should regulations be more stringent? What about insects brought from other countries which, having no natural enemies in this country, would destroy our crops? What about birds which carry fever imported from abroad? What about dangerous drugs? On the other hand, should regulations be simplified to facilitate trade? Should there be more stringent labeling laws?

Parties. Students should know that the UCC considers two types of sellers who may enter into sales contracts. The first group consists of occasional sellers who merely want to dispose of unwanted goods. There are few regulations dealing with this group. The teacher may ask the class how many of them have been occasional sellers and what they offered for sale. The UCC concerns itself primarily with the second group, the merchants whom it defines as people known to deal in certain types of goods and who are considered experts in their particular field. Students should understand that the same person can be both a merchant and an

occasional seller as in the case of a clothing merchant who decides to sell his or her personal car. Merchants are supposed to know the customs under which their particular goods are bought and sold and to conform to these accepted standards in all dealings.

Price. Price as defined by the UCC may be money, articles and money or articles (as in the case of barter) which the buyer gives or agrees to give to the seller in exchange for goods purchased. The price may be set per unit, or in total amount. The price may be set by a third party if both the buyer and seller agree. A teacher may test students on their mathematical expertise by including a number of problems dealing with billing. This is particularly valuable to students who presently are not enrolled in business mathematics.

Types of Sales Contracts

Students should be made aware that while the UCC permits terms of sales contracts to be set by mutual consent of the buyer and seller, most sales contracts tend to fall into several common categories. To facilitate matters, the following information might be duplicated and distributed to the students for quick reference.

Auction Sales. Auction sales are essentially cash sales. Payment and possession of goods usually follow immediately upon the auctioneer's declaration that the sale has been consummated by the highest bidder.

C.O.D. Sales. In a C.O.D. sale the buyer must make payment to a third party (a common carrier) before the goods are released and the title and possession pass to the buyer.

Secured Payment Sales. Sellers use negotiable warehouse receipts, bills of lading and sight drafts which must be satisfied with payment by the buyer before the goods are released to the buyer by a common carrier or warehouse superintendent. These sales require elaborate agreements and may require the services of banks or other third and facilitating parties.

Extended Secured Payment Sales. Title and possession of goods pass immediately to the buyer but the seller holds written evidence of debt as in a chattel mortgage, promissory note or time draft.

Open Account Sales. After cash sales probably the most numerous sales are those that use open accounts. These include charge accounts extended by the seller, charge plates and credit cards from banks and charge plates from special organizations. The title and possession of goods pass immediately to the buyer. A statement or bill for these goods is sent to the buyer on a monthly basis. Open account sales contracts depend upon credit information. (The teacher could have a very profitable discussion which would concern itself with what merchants consider a good credit risk, the advisability of charging goods, establishment of credit, new laws concerning credit for women and other pertinent topics.)

Sales on Approval with Privilege or Return. These contracts are usually made between parties whose dealings have been mutually satisfactory.

Goods are shipped on open account with the understanding that, after a reasonable time, they may be returned in good condition to the seller if found unsatisfactory.

Free on Board Sales Terms (F.O.B.) In F.O.B. sales the time when the title is transferred from the seller to the buyer is of utmost importance. There are two types of F.O.B. terms in these contracts for the sale of goods: *F.O.B. shipping point* is where the seller delivers the goods to a common carrier and title passes to the buyer at this point. *F.O.B. destination* is where the seller pays for transportation, insurance and other costs until the goods reach the buyer at which time the buyer takes possession and title of the goods.

Secured Credit Sales Transactions. All installment or time-payment sales of goods come under Articles 2 and 9 of the UCC, which regulate the rights and the responsibilities of the buyer and the seller. These transactions also may come under Federal Regulation Z of the Consumer Credit Protection Act and the Uniform Consumer Credit Code for those states that have adopted it. The buyer, upon payment of the initial or down payment, receives possession of the goods with all the privileges of their use and all the responsibilities of their proper care. The seller retains the title to the goods and may repossess the articles if and when the buyer defaults on agreed upon installment payments if the contract contains this secured conditional privilege. For further protection of the seller's interest in the goods, the seller usually requires that the buyer purchase an insurance policy in the name of the seller.

Bulk Sales Transactions. Bulk sales generally deal with the sale of an entire inventory of the seller as in the case of an entire warehouse of goods or the contents of a store. These sales are governed by Article 6 of the UCC, which sets forth the rules to protect any creditors that the seller may have. Under this Article, the seller must provide the buyer with a list of all the creditors that the seller may have. The buyer must contact each and every creditor to state his or her intention to purchase the seller's entire inventory and give the creditors time to file claims against it. Transfers excepted from this Article are listed in Article 6-103.

Conditional Sales Contracts. This is one of the most common types of sales contracts when expensive items, such as automobiles, television sets and large appliances, are purchased. Many students will become involved in a conditional sales contract when they purchase their first motor vehicle. Examples of contracts of this type should be displayed in the classroom. In addition teachers should duplicate a sample conditional sales contract for students to read and complete in class. This type of simulation adds reality to the study of contracts.

Remedies for Breach of Sales Contract

Students should understand that the widespread adoption of the UCC has not eliminated cases or disputes between buyers and sellers even

though it has kept such disputes within manageable bounds. Generally, however, the remedies include compensatory damages, rescission or restitution and, in some instances, specific performance.

In case there is litigation, usually money damages are awarded the injured party. Courts favor disposition of breach of contract cases by levying damages consistent with the loss suffered by the injured party. The plaintiff must always attempt to mitigate damages, including taking reasonable care to prevent additional losses from occurring. Students should be asked to give examples of such reasonable care. Specific remedies of buyers and sellers of goods may be found in the UCC, Article 2, Part 7.

Teaching Suggestions

Teachers should have little difficulty generating interest in the study of sales contracts. By the time they reach high school, students are familiar with the basic sales contracts—cash sales and sales on account. Their parents possess credit cards and receive monthly statements. Students hope to emulate their parents as soon as they become of legal age to do so. Conditional sales generate the greatest interest among the students because they know someone who is in the process of purchasing a car or are themselves interested in purchasing a car which they expect to finance by installment payments. Discussion of conditional sales can become a focal interest—a method of learning the various components of sales in general. However, these discussions must be managed carefully or the students are apt to ramble and inject peripheral matter.

Some time should be spent in discussion of the Consumer Credit Protection Act, popularly known as the Truth in Lending Act, relative to how it protects the consumer. Students should understand that the Act does not remove the responsibilities of the buyer nor does it encourage slipshod attitude in fulfilling financial obligations.

A very attractive bulletin board titled, "Samples of Sales Contracts" can be a class project with each student bringing a sample sales contract—a supermarket tape, a sales slip, a memorandum, a confirmation letter, a requisition form, a conditional sales contract, etc.

If time permits, the teacher may assign oral or written reports dealing with consumer protection—an area of interest to any business employe and to the consumer-buyer. The following topics might prove of interest:

Protection Against Monopoly (from Sherman Anti-Trust Act of 1890 to Robinson-Patman Act of 1930).

Federal Trade Commission and its duties as described in the Act of 1914.

Federal Trade Commission and its duties as of today—after Wheeler Lea Act of 1938.

Labeling regulations as they apply to fur, wool, foods, etc.

Federal Food Drug and Cosmetic Act and its powers to prohibit dangerous foods and to regulate adulterated and misbranded goods.

Recent "Truth in Advertising" cases and their impact on industry.

Material for the above suggestions may be found in a high school library. Furthermore, the topics are of current interest and much information can be gleaned from newspapers and magazine articles.

A suggested reference source for business law instructors—*Pennsylvania Consumer Law . . . . for Consumers*—is available without cost (single copies only) from the Institute for Community Services, Edinboro State College, Edinboro, PA 16412. This monograph gives an overview of most Pennsylvania laws and certain federal laws relating to consumers in their daily life situations. This publication is intended to be used as a guide by laypersons. One section of the manual lists both governmental and private organizations which offer information and/or assistance to consumers.

A simulated trial wherein the buyer and the seller dispute their claims is an interesting way to bring the topic of breach of sales contracts alive for the students. There should be a judge and a jury. Each litigant should be represented by an attorney. This will involve a goodly portion of the class. Other students can help gather pertinent papers—bills of sale, requisition slips, records of payment, etc. to substantiate the claims of each litigant. Bills of lading, time or sight drafts and warehouse receipts can be introduced as evidence if the teacher feels that the class can handle these documents of title and negotiable instruments as parts of sales transactions. The trial should end with an award of money to the injured party.

WARRANTIES

Since almost everything they buy usually comes with some sort of a guarantee, students think that they understand warranties. Because of its universal application, the subject of warranties presents a number of problems for the students where a more precise use of the word is implied.

HISTORIC BACKGROUND

Teachers should give students a brief background of historic information responsible for the evolution of warranties. Students need to understand that the impersonal nature of modern businesses is responsible for the gradual shift from caveat emptor to caveat venditor. Where once the buyer and seller had an opportunity to bargain face to face over goods that were relatively simple in composition and on display for the buyer to examine, goods offered for sale at the present time are often bought by sample or by description in a catalog. These goods are bought through

suppliers often several times removed from the manufacturer or the grower. Many goods contain intricate chemical compounds and working parts beyond the knowledge of the buyer. Buyers must depend upon the reputation of the seller that the goods being bought will be as represented and will perform as advertised.

The UCC specifically lists certain warranties which are a part of any sales contract and establishes rules regulating trade practices with emphasis upon fairness and high business standards between merchants. There are two general types of warranties which the students should know, implied warranties and express warranties.

Implied Warranties

No sales contract may be made without the following implied warranties except in rare circumstances which are not of vital importance to the student of business law.

1. *Warranty of Title.* Every sale implies that the seller has a valid title and that this title is free from liens or other encumbrances, such as patents or copyrights owned by third parties.
2. *Warranty of Quality.* In all sales where purchases are made by sample or catalog description, there is an implied warranty that goods shall be as represented.
3. *Warranty of Fitness.* If the buyer relies upon the knowledge and expertise of the seller, it is implied in the sale that the goods will be suitable for the purpose for which they are being purchased. An exception is made if the buyer orders by trade name and refuses to accept the advice of the seller.
4. *Warranty of Resalability.* If goods are sold by one trader to another for the purpose of resale, it is implied that the products are acceptable in the trade, or will suit the needs of the ultimate consumer. (For instance, seed potatoes will grow and wheat seeds will germinate.)

Express Warranties

Express warranties are either written or oral promises which guarantee that the goods bought will conform to the model or sample displayed by the seller. In many instances the guarantee states that the goods purchased will perform as promised. (The TV will bring clear pictures, the vacuum cleaner will clean the rugs, etc.) Students should understand that if the contract for sale is in writing the warranty must be in writing also.

Exceptions

Goods marked "as is" are exempt from any and all warranties. Anything marked "no express nor implied warranty given" releases the seller from all responsibility, unless fraud, negligence or strict tort liability can be proven.

Teaching Suggestions

The following makes an interesting assignment. Have each student compile a report giving the following information: the name of an article recently purchased by some member of his or her household (a picture of the article from a catalog adds interest), where purchased, a copy of an express warranty and a facsimile of a card sent to the manufacturer giving the date of the purchase and the place of business where purchased. Of particular interest to the class will be cases wherein students have had difficulties which arose from purchases and how they were resolved.

Students can be assigned papers on topics, such as the Consumer Protection Agency, Better Business Associations and "Fly-By-Night" Contractors.

Warranties are not difficult to understand if the student is made aware that all warranties not only protect the consumer but promote a climate wherein merchants prosper because strict adherence to ethical business practices promotes trade.

REAL PROPERTY

Real estate offices are a source of many beginning positions for graduates and even a cursory knowledge of real estate law can be of great advantage for those seeking these positions. Further, some knowledge of legal terminology peculiar to real estate make on-the-job training easier for both the employer and the employe. Teachers should use the above motivation as students embark upon the vast and complicated study of law as it pertains to real estate. At the outset, however, teachers should caution students that a business law course can impart only an overview of the entire subject and in no way qualifies them to be "do-it-yourself" brokers and attorneys when they, as adults, decide to buy property.

Ownership of Real Property

When a person acquires property, legally he or she acquires land, buildings and all things "affixed hereto." This may confuse the students and time is well spent in exploring the subject at length by using examples based upon their own knowledge and allowing them to differentiate between which is part of real property under consideration and which is personal property. For instance, an in-ground swimming pool is part of real property while an above-ground pool is personal property because the latter can be moved without disrupting the property; electric fixtures within the building which are permanent in nature are real property but moveable garden lighting is personal property.

Rights Inherent in Ownership. Historically, title of property allows the owner the free and exclusive use of the property. The owner may will the property to whomever he or she wants; the owner can sell or give away

the property and the owner can put certain restrictions upon the property at the time of transfer whether by will, sale or gift. Students usually are well versed in the prerogatives that go with the ownership and little time need to be spent on this area.

Limitations on Use of Property. The Fifth Amendment to the Constitution of the United States guarantees one's right to acquire, use and enjoy property. The amendment is a limitation on federal government, which may not interfere with that right except by due process of law. The Fourteenth Amendment to the Constitution is a similar limitation upon states. However, the Tenth Amendment reserves police power to the states. This allows, among other things, limitations to be placed on the use citizens make of their property to protect the health and welfare of the public. In addition, many other restrictions were necessary as organized society became more complex. In a legal sense, there is no absolute ownership of property. It is always subject to laws, some of which are explained below.

1. Taxes are the most traditional limitation placed upon ownership of property. Nonpayment of property taxes subjects the owner to possible seizure and sale of the property. The whole subject of property taxes, assessment procedures, millage rates, tax rebates and various taxing bodies provide interesting material for student assignments and discussion. Students can be asked to compute taxes on various properties at different assessments and at a variety of millage rates; one or two students could visit a tax assessor and obtain assessment information. They may be allowed to see the tax duplicate to which all taxpayers have legal access. Students can participate in a class debate on subjects, such as "Should Real Estate Taxes Carry the Entire Burden of Local Services" or "Should Broad Based Taxes Replace Real Estate Taxes." Student interest in the subject of taxation is easily generated, and serves as a sound introduction to this important limitation on the ownership of property.
2. Zoning laws are designed to restrict the use of privately owned property. For example, a municipality may be "zoned" or divided into sections for residential, recreational, commercial and industrial purposes. Students may volunteer to see an officer of a zoning board or attend a local zoning hearing.
3. Nuisance laws are passed by local governing bodies to protect the health and well-being of its citizens. The more densely populated the area the more regulations are necessary—leaf-burning restrictions, prohibition of trash accumulation, ban upon barking dogs, exclusion of farm animals in urban areas and a ban on possession of dangerous wild animals kept as pets. Students can be asked to list other prohibitions and give their reasons why (or why not) such prohibitions are justifiable.

4. Environmental regulations are relatively new in the area of limitations placed upon the owner of real property. As population increases and natural resources diminish, laws often limit the owners exercise of unlimited use of his or her property. Flood control prohibits building of houses and other structures in flood plains. People are prohibited from destroying endangered species of wild life which are found on their property. Students can bring in clippings and magazine articles dealing with this subject. They will argue and press their point in which case the teacher must be careful to maintain neutrality, always explaining that the law tries to act in the best interests of society.
5. Eminent Domain is the greatest impingement upon the free and exclusive right of the owner. This inherent right of government to confiscate private property of the owner generally is not taken lightly. Land so taken must be for public use—highways, schools and other public buildings, power lines and parks. The government may also condemn certain personal property for a public purpose, such as charters, contracts and choses in action. The owner must be compensated fairly for the property taken. The price usually is negotiated between the parties. If the price as offered by the governing body does not meet with the owner's evaluation, the owner may ask for a hearing or may sue for reasonable compensation.
6. Building Codes are specifications established by municipalities to make sure that safe buildings are constructed which will not endanger the occupants or their neighbors. These codes often specify materials to be used in certain instances and ban other materials as unsafe. The codes provide for a periodic inspection during and after construction. The areas supervised usually include electrical work, heating system, type of roof, construction of chimney, plumbing, elevator(s), fire escape(s) and sewage disposal.
7. Easements are rights to use real property owned by another party in some specific manner. The rights benefit either the person or the land. These rights arise by contract, deed or law, and usually consist of rights-of-way, use of water, rights to erect poles for power lines and others.
8. Private restrictions of a land-owner developer are those found in subdivisions where one large piece of property is subdivided for a housing development. These restrictions often involve the general type of building construction, the number and type of out-buildings permitted, construction of fencing and planting and placement of shrubbery.

Tranfer of Real Property

Transfer of property is divided into three main categories: leases, sales and transfer by will or gift. Each category is covered by specific law which may require assistance of real estate agents and/or attorneys and their staffs. Working in this area affords one of the better opportunities for entry level clerical-secretarial positions for high school graduates.

As one of a number of motivational devices, students can be asked to list names of local attorneys and real estate firms with offices in the area best known to the student. Students can be asked to clip and bring to class advertisements of local real estate firms. Such lists make attractive bulletin board displays and bring attention to the students that transfer of real estate is an on-going business; each such transfer requiring work by attorneys and real estate brokers.

Leases. Because of their relative simplicity, leases should be presented to the students before the more complicated real estate transfers. Students easily grasp the concept that leases are contracts in which the owner of the property permits another to occupy the real estate on a temporary basis for a fee called rent. Because most leases are usually less complicated than the sale of real property, they are often handled routinely by property managers and real estate brokers. However, complicated, long-term leases usually are handled by attorneys.

Though leases for short duration are often oral, students should be reminded that all leases, such as contracts, for more than one year, generally, should be in writing to comply with the Statute of Frauds. In Pennsylvania, leases for more than three years must be in writing to be enforceable.

There are two general classes of lease—tenancy for years and periodic tenancy. Distinction between the two presents some difficulty to the students. The terms used should not be interpreted literally.

A tenancy for years lease is one which is drawn for a definite period of time (for a day, a week, a month, a year or any specified duration). This tenancy or interest in property automatically terminates at the end of the agreed time. The parties may have included an option to renew the tenancy for an additional period of time. The option also may convert the lease to a periodic tenancy, such as a tenancy from month to month—of indefinite duration. If the agreement is silent and the tenant remains in possession without permission of the landlord, the tenant may be treated as a trespasser or tenant. Until the landlord decides one or the other, a tenancy by sufferance exists.

A periodic tenancy is a lease which may run from week to week, month to month or year to year. Such leases are self-renewing each time for the original duration. Therefore, one party must give the other notice of intention to terminate the lease. The notice usually is thirty to sixty days in advance of termination.

There is usually little difficulty in getting a real estate agent to speak to the class. However, since these people have little expertise in making class presentations and know little about the students' general background in real estate or law, the teacher should provide a list of topics to be discussed. Such a list might include: what is meant by the phrase "fit for human habitation"; duties of the landlord and duties of the tenant; reasons, other than nonpayment of rent, for eviction; who cares for public areas in multiple dwellings; what is meant by fixtures as applied to tenant and landlord; what is the general effect of the nondiscrimination laws and what is meant by security deposit. The speaker may add to this list. Sufficient time should be allowed for student questions.

Since students learn best by doing, each student should be required to construct at least one lease in each category—periodic and tenancy for years. Students should learn that all written leases must contain four elements to be valid contracts. They are the names of parties, description and conveyance of the premises, duration of lease and consideration. The law implies that the premises must be fit for human habitation, but beyond these basic elements the parties are generally free to agree and include other provisions.

If time permits, the best leases should be read in class and discussed by the students using the following criteria: Is the information complete? Does the lease favor the landlord? Does the lease favor the tenant? Is the agreement fair to both?

Sale of Real Estate. Real estate transfers occur with great frequency in most neighborhoods. Students are familiar with the general procedures in the purchase or sale of a house, farm, lot or commercial building. Further, their interest in the purchase of real estate is high since all young people hope to own a home of their own at some future time.

Ownership of real property is one of the foundations of the capitalistic system. Every step in connection with transferring ownership of real property—land and buildings—is governed by law. Attorneys and real estate agents who specialize in settlements of real estate sales are prepared to help individuals through the various steps necessary to complete the sale and transfer of title.

The transfer of property through sale is a common occurrence in the life of the student, and many feel that they have considerable knowledge of the procedure. Teachers may find that a pretest is a good device to evaluate this knowledge, and to reveal to the student its complexities. Such a test should be neither long nor complicated.

Business law textbooks present the essential real estate transfer procedures adequately. Students should understand these procedures and points of law. This basic knowledge will serve them well as citizens buying or selling property and/or employes in real estate and law offices. Points to stress might include:

1. Real estate sales generally must be in writing or evidenced in writing to comply with the Statute of Frauds. This is a particularly important concept because of the growing trend in "do-it-yourself" sellers who offer their property to the buyer by themselves thus bypassing the real estate agent and his or her commission.
2. Buyers and sellers should use the services of attorneys, preferably those who specialize in real estate transfers, in closing the sale and transferring the title.
3. Students should understand the difference between a quitclaim and a general warranty deed.
4. Buyers, except those entitled to VA or FHA mortgages, should have an appraisal made by a certified appraiser, the property checked by a licensed engineer for safe construction, a survey made by a registered surveyor and a title search made at the office of Registrar of Deeds usually located in the local court house.
5. Buyers should purchase Title Insurance to insure against financial loss if there is a defect in the title which did not show up in the title search or if an adverse claim is made by another party.
6. Since almost all property is purchased with borrowed funds, buyers should shop for the lowest costing mortgage loan available. Comparison shopping for the lowest interest rate may prove financially beneficial over the life of the loan.
7. All pertinent information, such as the price decided upon, down payment, date of occupancy, conditions of payment, assumption of previous mortgage, repairs and clean up, should be set forth in writing in a document called Contract of Sale or Contract to Buy. Teachers should point out that even small discrepancies between what one party or another "thought" may cause problems if it does not appear in the Contract of Sale. Therefore, the contract should be planned carefully so that the eventual transfer of title will run smoothly.
8. The settlement, itself, presents an opportunity for the teacher to dramatize the transaction by assigning the roles of the attorney, the buyer and the seller to students and allowing them to go through the enactment of procedure which takes place at that time. The teacher may want to invite an attorney to speak to the class on these matters as a reinforcement of the text assignments.

What makes the study of real estate different from other areas of business law is that the real estate sales industry and the housing construction industry are extremely innovative and that much of the subject matter in textbooks becomes obsolete and dated. Therefore, teachers must endeavor to update the information to keep students as current as possible. This can be done through the use of newspapers, magazines and trade papers.

In the area of housing alone there are many innovations. Triggered by the high cost of conventional housing, the housing industry offers a number of alternatives to a single house: a town house, a condominium, a cooperative dwelling and a mobile home. While the last two strictly speaking are not real estate, they do offer people alternatives to renting. Students should have some opportunity to investigate all these alternatives including costs, resale values, taxes and other expenses.

Townhouses and condominiums are real estate. As single homes they are assessed for real estate taxes. They are eligible for mortgage loans under VA and FHA loans as well as conventional mortgages. The basic difference is that condominiums have party or common walls and often share public areas for which they are assessed prorata.

Mobile homes are not real estate; they are classified as personal property. However, the land upon which these homes are located, if owned by the owner of the mobile home, is real estate and so taxed. Many localities levy fees upon the owners of mobile homes to compensate for municipal services, such as schools and roads. Also, mobile homes have different building code regulations than permanent dwellings.

Cooperatives are owned by a corporation chartered for this purpose. The cooperative sells shares to those who want to live in the apartments owned by the corporation. Under a separate covenant signed by the purchaser of the shares, the purchaser of a certain number of shares gets the use of an apartment of his or her choice wherein he or she may make any number of internal improvements or renovations. Upon payment of a certain assessment to the corporation for use of common public areas and payment for his or her utility bills, the apartment remains in the possession of the shareholder. The corporation pays all real estate taxes and all mortgage payments.

The study of real estate lends itself especially well to individual study projects to be completed by the students. Such projects are most valuable if they are constructed by the teacher of a particular class as he or she is in a position to know the needs of the students.

Such projects should be carefully explained to the students. Duplicated instructions and guidelines should be given to each student. Research material, such as current magazines, newspapers and trade papers, should be requisitioned from the library and placed in the classroom for easy access by the students. Local advertising of listings and local lending institutions should be used. Teachers should insist that the project be as realistic as possible.

The following student outline of a possible project follows:

1. Select from recent listings a home found in the _____ (local newspaper) that you would like to purchase. Assume that you are working and have approximately 20 percent down payment on hand or are entitled to a VA or FHA loan.

2. Determine your annual income and the number of obligations to which you are already committed, such as car payments and department store accounts. Then, make a list of all these assets and liabilities to present to the lending institution.
3. Clip from the paper the listing in which you are interested. Paste this listing on a sheet of paper and underneath indicate who handles this listing and reasons why you are interested in the property.
4. Prepare an Abstract of Title which you may develop, and keep the material as realistic as possible. State where you would have found the information if this were a real search.
5. Prepare a letter to a title insurance company asking for title insurance on the property you have in mind to purchase. (You will find names and addresses of such companies in a City Directory.)
6. Write an Offer to Buy Contract; be specific and realistic. Include the date of settlement and down payment of money to be given at this time. Is the money to be put in escrow or handed to the seller? Will you be able to take over the present mortgage? Who will pay for what — the abstract of title, the survey? If you are getting a VA or FHA mortgage, will the seller expect you to help with the interest? Who pays for the necessary repairs and clean up?
7. Explain why you want a warranty deed in preference to a quitclaim deed. If you have a copy of an old deed or can get one, include it with your project. (This deed will be returned to you.)
8. When and where will the settlement be made? Who will be present? What documents will change hands? Who will receive the money less what expenses? What taxes will you be expected to pay? What taxes will the seller pay?
9. Assume that you will need a mortgage. Which type have you selected-conventional, VA, FHA? Why? Did you bargain for guaranteed transferability and an open line of credit? What institution is giving you this mortgage, at what rate of interest and for how many years? Can you figure the total cost of your new house considering the principal and interest?

Teachers should allow a minimum of ten periods for the project. Resource material should be easily accessible. The teacher will have to give some students a great deal of help regardless of instructions. Students should feel free to consult with the teacher at all times in areas which they do not understand. Teachers should encourage consultation with resource persons—real estate brokers, parents and other adult friends. Teachers will find that students will present creditable projects and interest at all times will be high.

CHAPTER EIGHT

Laws That Govern Business Relations of Individuals

The law is a body of man-made rules designed to enable people to live in harmony with each other.

—Ephraim Tutt

Business relations among individuals are many and varied. While these relations are based upon general principles governing contracts, specific rules and customs have evolved to solve problems in each situation, which enables businesses to operate smoothly in the areas of employment contracts, agency, bailments, spread of risk and business organization.

EMPLOYER-EMPLOYE RELATIONS

Students generally understand that all people who work for wages or salary are employes. This is not a new concept since many students are employed on a part-time basis. However, their understanding of the legal obligations of the employer and the employe are limited, inaccurate and often influenced by the attitudes, experiences and values of their friends and relatives.

In introducing any topic which is partially familiar to most students, teachers might start with a pre-test to orient themselves as to what areas need to be emphasized during the study of the topic. Some classes will be more knowledgeable in certain aspects; others will need a great deal more substantive information before any worthwhile discussion can take place in the classroom. A pre-test is a device which will uncover much pertinent information including prevailing attitudes and values prevalent in the group. This method is useful in introducing employer-employe relations. The pre-test need not be long or technical. What the teacher is seeking is a common ground upon which to build teaching experiences not eliciting learned information.

An alternative approach to the topic might be to present to the class a list of terms associated with employer-employe relations. Such a list might contain the following terms: closed shop, picketing, union local, rank and file, boycott, featherbedding, lockout, union shop, mediation,

collective bargaining, right-to-work, job classification, split shift, fringe benefits, labor contract, unemployment compensation, overtime, vocational rehabilitation, apprentice program, equal pay, kickbacks, grievance procedure, workmen's compensation and unfair labor practices.

As with a pre-test, the teacher is endeavoring to determine students' previous knowledge and their prevailing attitudes by listening to their response to each of the above terms. Using this knowledge as a basis, the teacher can then proceed to plan the subsequent study of the subject, starting with employer-employe contractual relations.

Contract of Employer-Employe

Most business law textbooks cover the contractual relationship between employer and employe adequately. Some textbooks include such important but extraneous matters as letters of application, resumes and interviews. While these topics usually are studied elsewhere in the business education program, they can be reviewed if time permits. However, the primary objective of this topical area is to stress the contractual aspects of employer-employe relationships. Students should be made aware that all such relationships are in reality business contracts with each party promising something in return for something else.

Specifically, in an employment contract the employer as a party of the first part promises to pay the employe wages, to provide safe working conditions, to give reasonable treatment, to offer adequate instructions, to make available safe tools and machinery and to employ a sufficient number of co-workers to do the job. The employe promises to obey all reasonable rules, to follow directions of supervisors, to be loyal to the employer and to possess adequate skills necessary to perform the job.

Social Legislation

General background of the rise of the union movement and social legislation enacted in the past forty years should be explored if time permits. Information about the history of the labor movement may be found in any high school library. Any local union office will be happy to provide pamphlets and brochures about its union. Students might be assigned a number of topics dealing with this broad aspect of employer-employe relationship. These reports could be summarized orally in class. The following federal legislation is suggested for review:

Wagner Act of 1935 (Provides for collective bargaining)

Fair Labor Standards Act of 1938 (Defines minimum wages and hours)

Labor Management Relations Act (See also: Taft-Hartley Act) of 1947 (Sets rules for grievance procedure and an 80-day cooling off period)

Labor Management Reporting and Disclosure Act (Landrum Griffin Act) of 1959 (Makes filing of financial reports by labor unions mandatory)

Equal Pay Act of 1963 (Requires equal pay for men and women doing equal work)

Civil Rights Act of 1964 (Forbids racial, religious, sex and national origin discrimination by employers or unions)

Federal Occupation Safety and Health Act (OSHA) of 1971 (Sets safety and health standards in working areas)

Employment of Minors

Students are interested in laws governing employment of minors. Teachers will find classes eager to acquire knowledge which is of importance to most of them. Students should understand that most states consider any age under 18 as that of a minor and have enacted laws for their protection.

Teachers might find the following rules governing employment of minors in Pennsylvania useful since they are not found in textbooks.

The Pennsylvania Department of Labor and Industry administers laws governing working conditions, hours, etc., of minors in Pennsylvania. The Department is aided by the public schools of Pennsylvania in issuance of working certificates for those minors who are enrolled in school. All employers who employ minors must have these certificates on file for inspection.

Maximum legal hours of employment for minors under 18 years of age may not be more than eight per day or 44 hours per week. No minor may work more than five continuous hours without an interval of 30 minutes for lunch. Students between 16 and 17 years of age may not be employed for more than 38 hours per school week during the school term. Minors aged 14 and 15 may not be employed more than four hours on school days and no more than 18 hours during a school week.

AGENCY

As American business becomes bigger and as more businesses become incorporated, laws governing agency become increasingly more important to young people who expect to apply for entry jobs upon graduation. These young people often are placed in the position of acting as agents without fully realizing that they are doing so since the line of demarkation between the legal definition of an employe and an agent often is unclear. Business law teachers should make every effort to explain to students that they usually are employes when they follow specific directions of their supervisors, such as typing a business letter. When they deal with third parties, such as customers, salespersons and suppliers, they may be acting as agents.

This concept and its legal implications are difficult for the student to understand, especially since most textbooks cover agency with varying degrees of thoroughness and most courses of study in business law allot

a relatively short time to the study of this complicated part of business law.

Suggested Teaching Techniques

A time-saving and expeditious teaching strategy might be to introduce the topic with an outline to be included in the student's notebook. Such an outline may be prepared beforehand by the teacher, duplicated and distributed to the students. This saves time and works well with mature, highly motivated students. Other students need class activity to produce desired learning experiences.

Outline Approach Method. Rather than distribute a teacher-made outline for the use of students, teachers may find that an outline which is prepared by the teacher and the students working in class together produces many benefits in reinforced learning and student interest. The teacher may wish to write each heading on the chalkboard and fill in items as students present them. With direction and encouragement from the teacher, the students will develop an outline similar in all essential respects to the one constructed by the teacher alone. A sample of an outline follows:

1. Definition of terms:
   Agent is one who acts in behalf of someone else.
   Principal is one who is competent to make a contract.
   Third [illegible] one who deals with the principal through an
2. [illegible]
   General agents are those who act in all business matters, such as corporation officers and general managers of business.
   Special agents are those who are employed for a specific business undertaking.
   Brokers are agents who bring the buyer and seller together but do not possess the goods or services themselves.
   Commission Merchants (Factors) are agents who handle goods of a number of principals at the same time in the market place.
   Del Credere agents are those who sell goods, extend credit and guarantee payment to the principal.
   Auctioneers are agents who sell goods in irrevocable public sales.
   Attorneys-at-law are confidential agents who represent their clients interests.
3. How Agency is Created:
   By express agreement either oral or written (There must be a written agreement if duration of agency is for more than one year.)
   By necessity created by law in emergencies
   By ratification or approval by the principal of an unauthorized act
   By estoppel when principal falsely leads a third party to believe that there is an agency

4. How Agency is Terminated:
   By performance
   By mutual agreement of principal and agent
   By revocation of agreement by the principal
   By rejection of agreement by the agent
   By operation of law as in the case of bankruptcy of the principal, death or insanity of either the agent or the principal, destruction of goods to be purchased or sold or by subsequent illegality of transaction.
5. What Agent may not do for the Principal:
   Perform any act which is illegal if performed by the principal
   Cast ballot in public elections
   Serve in military service
   Serve a jail sentence
   Take an oath of office
   Perform services which require principal's special skills

Discussion of Mutual Obligations of Principals, Agents and Third Parties. Upon completion of this outline, the students should be given ample opportunity to discuss various aspects of agency laws until the legal concepts are fully understood. One of the best ways to accomplish this is to list the various obligations that each party owes to the other.

Student Activities. Aside from the general discussion of agency laws and the study of cases usually included in the textbooks, students should be asked to make a comprehensive list of agencies in the community (real estate, insurance, travel, etc.). However, care should be taken to explain to the students that the word "agency" as it is often listed in a title of a firm does not always mean that the firm is a true agency. An agency may be an independent contractor who buys and sells a particular article in preference to, or exclusion of, others, as is often the case of automobile retailers.

Students can be asked to write a job description of any entry job that they may expect to qualify for upon graduation. Behind each duty they may be asked to perform, they should indicate if the duty is one of an employe or one of an agent. This latter exercise firmly establishes in the minds of the students that even at an entry job they may be acting as agents for their employer.

Since current emphasis is placed upon written expression by high school students, teachers have an opportunity to ask members of the class to write a short essay—for extra credit—upon any of the following or similar topics dealing with agency: Why should some agents be licensed? Why do persons who serve as commission agents usually collect money for the principals? Why are real estate salespersons usually brokers?

BAILMENTS

Stripped of their legal terminology, bailments should present few problems for the students. From childhood, all students have had an occasion to lend or borrow articles. From an early age youngsters are taught to take care of things that they borrow, but they soon learn that this exceptional care does not extend to anything one rents on the presumption that rent pays for the normal "wear and tear" of the article.

Further, most students of high school age have used public transportation and public accommodations without knowing that law considers these situations as a bailor-bailee relationship. It comes as a surprise to them that whenever they give some article to be repaired or stored the transaction comes under the laws governing bailments. Therefore, without knowing their legal implications, students have been dealing with bailments much of their lives. In essence, the entire subject of bailments becomes not a question of teaching new concepts but of translating everyday occurrences into legal terminology and showing the students the legal significance of these transactions.

Legal Terminology of Bailments

Since the terminology rather than the concept is apt to confuse the student, the teacher is advised to start the topic by defining the most common terms with which the student is familiar into everyday equivalents. For instance, the following terms should be defined before any chapter assignments are made:

Bailor — a lender, one who owns the goods (except real estate), one who gives goods to be stored or repaired, one who misplaces or loses goods and one who uses public accommodations and public transportation

Bailee — a borrower, one who keeps goods in storage for another, a repairperson, one who finds misplaced or lost goods and one who provides public accommodations and public transportation

Public Accommodation — hotel, motel, inn

Public Transportation — train, bus, trolley, airplane

Public Utility — gas, electric, water, telephone companies

Guest — one who uses public accommodation, a transient

Lodger — one who uses public or private accommodations for a long period of time

Passenger — one who uses public transportation

Useful Vocabulary Exercises

The following groups of words are given as examples of related terms which can be assigned to students to further reinforce legal terminology

related to the study of bailments. The words are given in groups to help students differentiate between the terms, as for instance:

1. Gratuitous Bailment, Mutual Benefit Bailment, Bailment by Necessity, Bailment for Hire, Constructive Bailment, Bailment as Security for Loan, Extraordinary Bailment and Tortious Bailment
2. Mislaid Goods, Lost Goods, Abandoned Goods and Estrays
3. Common Carrier, Contract Carrier and Private Carrier
4. Reasonable Care, Extraordinary Care and Slight Care
5. Bill of Lading, Order Bill of Lading, Consignment, Consignee and Consignor

The above list is by no means complete. Other groups of words can be used just as effectively. In learning the above vocabulary, students should be asked to use the words in sentences or in paragraphs. Words merely defined have little retention value.

Transactions not Considered Bailments

One of the difficulties in teaching bailments occurs when the students must be apprised that certain situations which seem to fall into the category of bailments are not considered bailments under law. Since textbooks usually list these situations separately as they come under other topics in the discussion of bailments, perhaps it is easier for the students if the teacher would list this group together for the purpose of clarity. For instance, a bank deposit does not come under the law of bailments because the identical bills are not returned to the depositor when a withdrawal is made. The same holds true when one borrows a cup of sugar from a neighbor or a piece of paper from a fellow student. In each case an equivalent, not identical, article is returned. Conditional sales are not bailments even though the title does not pass to the buyer until payment is made in full. Rent of real property is not a bailment; it is a lease. Rented safe deposit boxes are not bailments since the bank does not have access to the contents.

Suggested Activities

Since the concept of bailments is not new to students, many of them will be willing to share their experiences with other students. Interesting discussions can be initiated by the teacher and the students. Students can be guided into discussions of the duties of the Interstate Commerce Commission, Public Utilities Commission and Public Service Commission; procedure of hearings before each group; equal accommodations laws; duties of finders of estrays; lost and misplaced articles; what is meant by "Act of God"; etc. These discussions are limited only by the time allotted to the topic.

INSURANCE

In developing insurance as a topic, teachers are advised to be on the alert to keep the subject within the time schedule previously decided upon for the course. This caution is important because insurance per se is a broad and fascinating subject that is of great interest to the students. This interest, unless carefully directed, can lead to expenditure of more time than is warranted. However, since insurance is of great importance in the private lives of Americans and to the economy, students should receive exposure to the many insurance contracts which presently are used in industry and among individuals.

Introduction of the Topic

Experience indicates that a discussion of automobile insurance creates interest among the students many of whom own or have access to cars, and some of whom are paying premiums on that insurance. Further, automobile insurance touches upon many important facets of the entire insurance field and thus enables the teacher to introduce these concepts early in the discussion of the topic. Automobile insurance involves the following risks: theft, fire, pilferage, collision, liability to property or persons and the present Pennsylvania law which mandates a no-fault insurance coverage. A comprehensive option may cover the vehicle for fire, lightning, flood, hail, windstorm, vandalism, etc. Discussion of automobile insurance coverage gives the teacher an opportunity to discuss the assigned risk plan which is in operation in Pennsylvania for those drivers who are poor risks and who are unable to get coverage through ordinary means.

Historical Background

If time permits, a historical background of the development of the insurance concept can prove to be an interesting assignment for students. Most high school libraries will have sufficient material on the history and development of insurance starting with the marine insurance of Venice in the 15th century, the history of Lloyd's Coffee House, the home of insurance underwriters and the Society of Assurance of Widows and Orphans.

Insurance Contracts

Many insurance offices will, upon request, mail a number of policies to the school requesting them. With the policy before them, students have less difficulty in understanding that insurance is a contract between the insurer and the insured and thus comes within the scope of laws governing all contracts. The purpose of an insurance contract is to spread the risk among a large number of people thus preventing one group or one individual from bearing the entire loss. In this respect insurance

makes an important contribution to the economy of the nation. Few individuals and businesses can function efficiently without the benefit of insurance protection.

Standard Policy. Most states—including Pennsylvania—use standard policies for almost all types of insurance. Teachers should explain that these standard policies can be adapted to individual needs and circumstances by means of riders or endorsements. These printed or typewritten additions are incorporated into the standard policy and are made part of the contract. Many policies go into effect at the payment of a premium and stay in effect as long as the premiums are paid or until a predetermined time of termination which is indicated in the contract.

Insurable Interest. This concept is a difficult one for the students to understand because of the difference between insurable interest in property and life. Teachers should be sure to explain that insurable interest must be present at the time of the loss of property but need not be present at the time of death of the insured. However, there ordinarily must be an insurable interest in both property and life at the time an insurance policy is taken. Students should understand that no insurance company will issue a policy to anyone who wishes to insure something or someone in which he or she has no potential risk of loss.

Uninsurable Risks. Teachers should emphasize that not only will an insurance company refuse to issue a policy if there is no insurable interest but that there are some risks which the insurer will not accept. These risks fall into several categories: the probability of loss cannot be statistically predicted; proof of loss is too difficult to verify; the temptation for deliberate carelessness or fraud is too great and the extent of the loss cannot be measured accurately. For instance, one cannot insure the outcome of a horse race or the winning number in a lottery.

Termination of Insurance Contracts. As with most contracts, termination of an insurance contract generally is by performance according to its terms, and due performance may terminate the insurer's obligation. This is true of life insurance policies, but in automobile and other property policies, the policy may remain in force. The insurance contract also may be terminated by mutual consent, by written notice of one of the parties, or by nonpayment of premiums, among others.

Types of Insurance Companies

Students might be interested in the organization of companies which underwrite insurance. There are stock companies, mutual companies, fraternal organizations and the government which offer insurance to special segments of the public. The Federal government through its program of social insurance—Medicare, Social Security, Survivors' Benefits, crop insurance and Veterans Life Insurance—offers protection to people in several distinct categories. Lodges and fraternal organizations offer insurance to its members at fees usually lower than commercial insurance

and carrying broader coverage. Mutual life insurance companies offer the benefits of dividends. These dividends are not actually income, but rather a refund of a portion of the premium based on the performance of the mutual company for the year. Stock companies are run, as any other business, for the benefit of their stockholders. Students might be asked to make a list of various types of insurance organizations with which they are familiar and which have agents or brokers in the vicinity.

Types of Insurance Policies

Students rarely are aware of the many types of insurance contracts which are available to individuals and businesses. Teachers might provide students with a comprehensive list to be used as reference. The following are the most common types of policies:

1. Property Insurance
   a. Fire insurance covers damage by fire, smoke, breakage, water, etc.
   b. Homeowners/Tenants insurance protects property owners and tenants against loss with broader coverage than an ordinary fire insurance. This may include liability and the t.
   c. Marine insurance covers loss of ships and cargo at sea.
   d. Inland Marine insurance covers all ships in inland waters and, through the instrument of floaters, many personal items—furs, photographic equipment, etc.
   e. Casualty insurance covers property through loss by flood, wind, explosions, hail, etc.
   f. Automobile insurance covers fire, theft, pilferage, collision, etc.
2. Liability Insurance
   a. Bailee insurance covers repairpersons and those doing personal service, such as drycleaners, meter readers and visitors on the premises.
   b. Automobile liability insurance provides coverage for bodily injury caused by the insured vehicle.
3. Personal Insurance
   a. Hospital insurance covers medical and surgical procedures which require hospitalization.
   b. Medical insurance covers general medical expenses due to illness or accident, major medical expenses and some dental procedures.
   c. Life insurance covers term insurance, industrial insurance, ordinary life insurance and endowment contracts (policies).
4. Social Insurance
   a. Medicare covers certain medical and hospital costs for those who are aged 65 or older.

b. Unemployment compensation covers income loss due to layoffs
c. Survivors insurance covers dependents of deceased workers covered by FICA.

5. Fidelity insurance protects institutions and individuals against loss due to dishonesty of employees.
6. Title Insurance protects purchasers of property against defective title.

Vocabulary

Teachers might find the following list of words useful in a number of assignments. These terms can be discussed prior to reading assignments or at the completion of the topic as a review. If the vocabulary is studied before assignments are given, reading and comprehension of the material is made easier. This is particularly true of slow groups of students. If the vocabulary is made part of a review, test scores improve measurably. In all cases the list should be included in the students' notebooks.

indemnify	hostile fire	annuity
binder	policy	insurable interest
face value	stock company	no-fault insurance
insurer	assigned risk	friendly fire
premium	insurance broker	participating policy
risk	floater	comprehensive insurance
mutual company	concealment	insurance agent
loan value	dividends	cash surrender value
representation	warranties	proximate cause
assessment	claim	adjuster
cancellation	valued insurance	non-valued insurance
group insurance	endowment	industrial insurance
underwriter	coinsurance	casualty
term insurance	endorsement	rider
liability	double indemnity	paid-up policy

Student Activities

Students usually are knowledgeable and interested in the entire topic of insurance. There are many facets of the topic which can be discussed in depth or assigned as written papers to be read in class. Debates are a possibility using topics, such as "Are high awards for claims by juries in the public interest?" "Should no-fault insurance be extended to property damage?" "Who, in the final analysis, pays for claims?"

Short themes can be assigned on the following or similar topics: What Insurance Protection Is Advisable in Partnerships? What Was the Reasoning Behind the Enactment of No-fault Legislation in Pennsylvania? What Is Assigned Risk Insurance? What Are Actuarian Tables and How Are They Used in Setting Premiums? Is an Annuity really Insurance or a Savings Plan? Who Is Presently Fighting Large Insurance Claim Awards Through Advertising?

Students can be asked to plan an insurance program for themselves which might be put into effect as soon as they become wage earners. As an alternative, the class as a whole can plan an insurance program for 18 year olds, 25 year olds, 40 year olds and finally 62 year olds. The latter program should include social insurance that is available. Also students can be asked to make a list of all uninsurable risks and give reasons why such risks are uninsurable. Finally, students can be asked to collect outdated policies and make a bulletin board display of the material.

BUSINESS ORGANIZATIONS

Most courses of study in business law allow a two-week period for the study of business organizations. Much can be accomplished in this time slot if the teacher presents the material in concise form and keeps the class moving in an orderly manner. This is sometimes difficult because most students have a fair amount of knowledge of the subject through their study in other business courses, particularly accounting.

Sole Proprietorship

Teachers should explain that sole or individual proprietorship is the simplest form of business ownership where one owner performs all managerial duties, provides all necessary capital, assumes all risks, pays all losses and collects all profits. There are no special legal requirements for sole proprietorship other than compliance with laws applicable to the business conducted. A quick survey of the surrounding area will reveal to the students that sole proprietorship is still the most prevalent type of business organization if the number of businesses involved is used as a criterion. However, if production of goods and services is to be used as a criterion, it certainly falls behind corporations which produce most of the nation's goods and services and employ the greatest number of people.

To help students understand sole proprietorship, teachers might ask for a list of local sole proprietorships. Students will need help in this exercise as they will overlook some of the most obvious small sole proprietorships, such as farmers, photographers, caterers, restauranteurs and service station owners.

Partnership

Partnerships have their roots in family cooperative ventures which originally had little formal structure. As partnerships became less family-oriented, their structure began to depend upon laws governing contracts.

Uniform Partnership Act. To avoid frequent misunderstandings and subsequent litigations, 47 states, including Pennsylvania, have adopted the Uniform Partnership Act (UPA) which attempts to set standards for partnership agreements which are uniform throughout the nation. The

Act defines a partnership as an association of two or more persons to carry on as co-owners of a business for profit. This definition excludes charitable associations, lodges and clubs. These associations are considered either as unincorporated associations or nonprofit corporations.

Articles of Partnership. In the interest of having a complete understanding between the partners, the partnership agreement should be in writing. At the minimum, these articles must contain the names and addresses of all the partners, type of business to be conducted, amount of the original investment by each partner, duties of partners, salary or drawing privileges of each partner, provision for distribution of profits/losses and method for dissolution of the partnership. The above list does not preclude partnership contracts from containing other and more detailed information if partners so desire. Articles of partnership should be drawn up under the supervision of an attorney.

Kinds of Partners. Students should know that there are several types of partners who might be involved in a partnership. They are:

1. *General partners* take part in the management of the partnership and are known to the public. The UPA provides that there must be at least one general partner in every partnership.
2. *Secret partners* take active part in management but whose connection with the partnership is not disclosed to the public.
3. *Silent partners* are known to the public but take no part in management.
4. *Dormant partners* are silent, take no part in management and are not known to the public.
5. Ostensible partners hold themselves out to be partners to the general public while in reality having no connection with the partnership. Under the UPA ostensible partners may be sued by creditors as if they were partners.
6. *Limited partners* are liable only for the extent of their investment. Limited partners come under the Uniform Limited Partnership Act (ULPA), which has been adopted by 48 states, including Pennsylvania. The revised ULPA is expected to replace the existing act. It was adopted by the National Conference of Commissioners on Uniform State Laws in August 1976.

Suggested Assignments. There are usually a number of good cases which can be examined as they deal with partnership litigations. The reasoning and legal implications can be explained by the students orally or in writing.

Because of its practical nature, the following assignment may appeal to the students. The class is divided into groups of three or four students. Each group is asked to construct a typical partnership contract which will be applicable to the particular business chosen by the group. These contracts should be in the form of rough drafts until scrutinized by the class as a whole. For this event, the class should prepare a checklist of

"what if" situations, such as what if the partners want to dissolve the partnership, what if one of the partners puts in less hours than other partners, what if one partner "dips in the till" for his or her own benefit, what if one partner overbuys without consent of other partners, what if the group wants to take in another partner, what if one of the partners wants to put in less initial investment and what if one partner has more skills than all the others? The list of "what if" situations is limited only by student ingenuity and interest.

Corrected and amended copies of articles of partnership should be collected from each group and the best ones can be displayed on the bulletin board.

Corporation

Introduction to corporate law poses unique problems for business law teachers. Corporate law—even in its simplest form—is complicated and the volume of material available to the teacher is limitless. Therefore, the problem resolves itself into distilling enough information to make the subject meaningful while keeping the content as uncomplicated as possible.

Students should understand that the corporate form of business organization is an invention which seeks stability through perpetuity, professional management and access to large amounts of capital investment through limited liability. A corporation is a creation that has its roots in large heavily capitalized enterprises, such as the Dutch West India Company and the Hudson Bay Company. The first American corporation was franchised by New York State in 1811 and its subsequent success has made this form of business organization the choice of most large business enterprises throughout the world.

Teachers need to explain that a corporation is an artificial person created by the state which grants the charter. Once the charter has been granted, the corporation becomes a legal entity with all the rights and obligations of a competent person. For instance, a corporation can enter into contracts, can make by-laws to govern itself and can sue and be sued. Through its agents a corporation can buy property, donate to charity, hire employes, manufacture and buy and sell goods. Since the corporation is an artificial person, it can perform all these and other acts only through its agents—officers and board of directors. The owners of a corporation are the stockholders who purchase transferable shares in the enterprise. Therefore, while owners may come and go, a corporation may continue into perpetuity.

Drawbacks of Corporations. Because the corporate organization has so many desirable qualities, teachers should inform the students that there are several serious undesirable features in this form of organization which induce many future enterpreneurs to opt for a partnership organization.

First, corporations are taxed by federal, state and many local municipalities. This amounts to double taxation for the owners since their dividends again are taxed as personal income.

Second, strict government regulations and the number and frequency of reports expected from corporate officers are both expensive and time consuming.

Third, a corporation may not engage in ultra vires activities (activities not specifically listed in its charter). This sometimes prevents corporate management from taking advantage of business opportunities as they present themselves in the marketplace. These activities may also cause its dissolution.

Fourth, personal management of a large corporation is impossible. The owners who are the shareholders do not take part in the management of the corporation which they finance. They meet once a year to elect directors who in turn elect officers who actually run the corporation. The only recourse the owners have if they are not satisfied with the management of the corporation is to not re-elect directors or dispose of their shares in the corporation.

Types of Corporations. Most students perceive a corporation as a business enterprise. They should be advised that there are three other groups of corporations which find that corporate organization facilitates their activities. These are:

Public corporations, such as county, state, city and municipal governments, function as corporations through agents and elected officials.

Quasi-public corporations, such as community hospitals and public universities, function through agents who are appointed or elected to the board of directors.

Private non-stock corporations, such as religious, charitable and social institutions, function through directors and officers elected by the membership.

In each case the board of directors and the officers, acting as agents of the corporation, perform all the duties and exercise all the privileges of a competent legal person.

Teaching Suggestions. Teaching the corporate form of business organization lends itself especially well to the teaching strategy usually called gaming. This strategy requires considerable prior organization on the part of the teacher. Committees must be formed. Research must be overseen. The entire class must be involved to make the greatest educational impact upon all students in the class.

With the teacher acting as a guide, the class first must decide on the type of business it wishes to conduct. The class must then settle upon the name of the corporation. Promoters must be elected. State of incorporation must be chosen. (In Pennsylvania, there must be at least three promoters all of whom must be adults). Capitalization of the corporation must be decided and "sold" to the class. A prospectus must be written

and "sent" to the Securities and Exchange Commission. A charter of incorporation, using one of the many examples found in legal textbooks, must be written.

The first meeting of the stockholders is held by the class as a whole. At this time the members of the board of directors are elected. They in turn elect the officers. In Pennsylvania there must be at least three directors all of whom must be adults.

If time permits, the class can hold a second meeting of stockholders assuming that one year has passed since incorporation. At this time the officers should present an annual report and all members of the class receive a check as a dividend.

CHAPTER NINE

Evaluation

Evaluation is the process of making judgments and coming to decisions about the value of an experience.

—Alfred Schwartz and Stuart C. Tiedeman

The development of a course of study should begin with well-defined objectives, as noted in the second chapter. Just as every research problem should be defined as to what it will attempt to solve, course objectives should be written to explain what is to be accomplished. Furthermore, these objectives should be understood by both the teacher and the students so the course will have direction.

After the objectives, course content and teaching methodology have been prepared, a variety of measurements to determine how well the students have performed or have learned specific content should be used. Suggested procedural methods and methods of evaluation permeate the entire bulletin.

STUDENT EVALUATION

Many types of tests can be used to evaluate student progress. The results of any test are most important, and the teacher should evaluate each test after it is used. In doing this, each test should improve in its effectiveness and serve to further students' learning. The following types of tests, as well as debates and homework assignments, are suggested.

Standardized Tests

Teachers can avail themselves of tests prepared by the textbook publisher. Such tests are general in nature and are designed to fit the needs of a variety of student abilities. These tests are especially recommended for a teacher who is teaching the course for the first time because they are convenient and easy to use and score. Teacher-made tests usually are superior to standardized tests.

Case Tests

Case tests are considered an effective method of learning to increase students ability to reason and to express their thoughts in writing about

case problems. These tests should be introduced carefully so that students may develop the ability to assess facts, draw reasonable conclusions by applying legal principles and writing in a clear and concise manner.

Recognition Tests

These can be true and false or multiple choice statements of legal principles and legal procedures.

Essay Tests

Students should be evaluated to determine their ability to write logically and informatively of legal principles previously discussed. The responses should be brief.

Vocabulary Tests

These tests can proceed from simple spelling tests to matching tests where a list of words relate to a column of mixed meanings or definitions. Students also may be asked to write the meaning of each term in a blank space following the word to be defined.

Attitude Tests

Attitudes are difficult to measure because students are apt to give the teacher the answers they know the teacher wants. Teachers have tried true and false tests giving various attitude statements and having students react to these statements. Examples of such statements are:

It's okay to trespass on their lawn, they aren't at home.
There's a cop coming, let's run.
That kid took Pat's bike. We should report the theft.
I can get out of paying for this. I am a minor.

Debates

Every legal principle can be debated effectively. However, debates are time consuming and the teacher should determine before the practice is repeated whether the value to the greatest number of participating and spectator students is worth the time spent in planning, conducting and evaluating the debate.

Homework Assignments

Teachers should use different methods in making assignments. Sometimes teachers might want to review the material with the class before making an assignment and allow students class time to work on it. Other times teachers might assign homework and offer only a brief explanation.

Teachers need to evaluate the methods being used by considering the ability of the class and its attitude toward homework.

TEACHER EVALUATION

By evaluating one's instruction, the teacher can effect changes which should produce more effective teaching. Unlike teaching skill subjects, such as typewriting, there are few objective criteria to evaluate both teaching and learning of business law. Therefore, business teachers need to recognize that a great deal of intangible learning does take place.

Student Evaluation of Teaching

Teachers often ask students to evaluate the course and its progress without signing their names. Students are asked to be frank and open in their reactions. This type of evaluation is not recommended for inexperienced teachers as the students can be so frank as to easily affect a teacher's confidence. Students may be asked to evaluate the use of tests, cases and other writings, teacher preparation, presentation of subject matter and teaching methods.

Teacher Self-Evaluation

Evaluation of his or her effectiveness as a teacher is perhaps more important in the progress of class learning than the evaluation of individual students. By evaluating such activity, the teacher can effect changes which will produce more effective teaching. Many experienced and dedicated teachers evaluate their procedures and reactions to their classes yearly and keep such evaluations on file for reference in subsequent years.

There are many other methods that the teacher should evaluate carefully. The process of evaluation should go on continually from the first day the class meets to the last day of the course.

OTHER AREAS OF EVALUATION

The means or techniques used in teaching business law also are in need of evaluation. Some of the areas that should be evaluated are:

Speakers

Business law lends itself to the use of a number of speakers who may vary in effectiveness. Most teachers keep a card file on available speakers, their addresses, telephone numbers, the topic of their expertise and their effectiveness before a business law class. This usually is followed by a frank assessment of the talk and reaction of the students.

Field Trips

Business law classes should take at least one educational field trip. Some classes visit municipal buildings, courts and offices in the court house, law offices, real estate firms and local jails. The number of trips and their variety depends upon administrative procedures, availability of transportation and other factors. For future reference, each class trip should be evaluated carefully on its educational value and the evaluation should include the behavior of the students involved and attitude of those visited. The following information should be kept in the teacher's file: date of the field trip, number of students, where the trip was taken, who arranged for the transportation, whom to contact next year and comments. The comments might read: Keep the number of students under 25 or have more adults. Next year provide students with check sheets. Do not depend upon students to carry their notes with them from class discussion.

Learning Activity Packets

Learning activity packets can be used very effectively in business law. However, a teacher may spend much time constructing a prototype of a learning activity packet only to find that its effectiveness is of minimal value in a real situation. Such packets may have to go through several revisions and teachers may have to scrap some pre-conceived strategies after using them with students the first time. Teachers are urged not to scrap a promising packet on its first or second try. With proper analysis and correction, many individual packets in business law may have educational value. Areas where packets may be used successfully are contracts, leases, torts, judicial structure, wills and deeds.

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E. MISCELLANEOUS SOURCES

Bureau of Consumer Protection, 25 S. Third Street, Harrisburg, PA 17101. Check for field offices in your area.

Local Ordinances. Check with your town council secretary, your city solicitor or your county solicitor.

Pennsylvania Bar Association, 401 North Front Street, Harrisburg, PA 17121.

Institute for Community Services: *Pennsylvania Consumer Law . . . for Consumers.* Institute for Community Services, Edinboro State College, Edinboro, PA 16412.

* Available at county court house libraries, university libraries, Pennsylvania State Law Library, Harrisburg